127-57

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1366.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM G. WELD, FREDERICK BAKER, AND GEORGE W. WELD, SURVIVING PARTNERS OF WILLIAM F. WELD AND COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

FILED FEBRUARY 20, 1888.

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INDEX.

	Original.	Print.
Petition filed October 4, 1887	1	1
Traverse filed November 12, 1887	6	3
Findings of fact and conclusion of law filed February 6, 1888	7	3
Opinion of the court	10	6
Judgment of the court	13	9
Application of defendants for and allowance of appeal	14	9
Certificate	15	10

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1 In the Court of Claims.

WILLIAM G. WELD, FREDERICK BAKER, and George W. Weld, surviving partners of the firm of William F. Weld & Company,	No. 15767.
vs.	
THE UNITED STATES.	

I.—*Petition—Filed October* 4, 1887.

To the honorable the judges of said court:

1. The claimants above named, William G. Weld, Frederick Baker, and George W. Weld, as surviving partners of the said firm of William F. Weld & Company, of the State of Massachusetts, respectfully represent:

2. That heretofore, to wit, upon the 24th day of October, 1883, the said claimants recovered a judgment in the Court of Commissioners of Alabama Claims for the sum of $229,637.63, with interest thereon amounting to the sum of $117,344.83, aggregating the sum of $346,982.46, for which last amount judgment was rendered in favor of claimants on the date last aforesaid, and the said case in which the said judgment was rendered being a case of the second class, of which the said court was given jurisdiction under and by virtue of an act of Congress, entitled "An act re-establishing the Court of Commissioners of Alabama Claims and for the distribution of unappropriated moneys of the Geneva Award," approved June 5, 1882.

3. That the aggregate amount of judgments of the second class rendered by the said court re-established by the said act of June 5, 1882, including interest, was the sum of $16,292,607.26.

2 4. That the aggregate amount of judgments of the first class rendered by the said court under the jurisdiction aforesaid, including interest, was $3,350,947.51.

That under and in pursuance of the provisions of the act approved June 2, 1886, entitled "An act to provide for closing up the business and paying the expenses of the Court of Commissioners of Alabama Claims, and for other purposes," the proper officers of the Government, charged with the duty of ascertaining and estimating the value of the furniture and property named in the fourth and fifth sections of such act, it was ascertained and estimated to be $800, and was credited to the said Geneva Award fund at that amount; and said officers further estimated the cost of the services and expenses provided for being estimated in section 4 of the said act, and fixed, estimated, and charged the same against the said fund at $15,000, and no more; and the said officers ascertained and fixed the amount of the payments and expenses provided to be paid out of the said Geneva Award fund, as required by sections 1 and 5 of the said act, at $735,193.63, and no more, and so charged the said expenses and deductions contemplated by said sections 1 and 5 of said act, that being the full amount of deductions authorized by section 1; and by reason of the said estimates and determinations hereinbefore set forth there was to be added to the sum of $10,089,004.96, named in section 5 of said act, the sum of $800, making an aggregate of $10,089,804.96, and from which aggregate was to be substracted, under the provisions of said section 5, the sum of $15,000, and the said sum of $735,193.63, aggregating the sum of $750,-

193.63, which, being deducted from the said sum of $10,089,804.96, left the sum of $9,339,611.33, to be distributed between judgments on claims of the first and second classes, as provided in said section 5; that, as hereinbefore stated, the said judgments on claims of the first class amounted in the aggregate, principal and interest, to the sum of $3,350,947.51
3 which said sum was fully paid on account of said judgments of the first class, and leaving a balance applicable, under the provisions of section 5 of said act, to the payment *pro rata* of judgments on claims of the second class, the sum of $5,988,663.82.

6. Claimants further represent that the said sum last named in the preceding paragraph has not been fully paid on the said judgments on claims of the second class, but on the contrary thereof there was only paid on the said judgments the sum of $5,739,495.41, whereby the sum of $249,168.41 remains undistributed as required by said act, although the same was appropriated and directed to be paid by said act, and was required to be paid on account of the said judgments on claims of the cond class.

7. Claimants further represent that they are informed, and believe it to be true, and therefore aver that the said sum of $249,168.41 was deducted from the amount distributable as aforesaid, and was not distributed or paid on account of said judgments of the second class, for the reason, and for no other reason, than that the same was claimed to be available under the said act for the purpose of reimbursing the United States in the said sum of $249,168.41, theretofore paid by the United States as expenses of the tribunal at Geneva, which expenditures had been paid by the United States under and pursuant to an act of Congress approved December 21, 1871, entitled "An act to make appropriations for expenses that may be incurred under articles 1 to 9, inclusive, of the said treaty between the United States and Great Britain, concluded at Washington, May 8, 1871." (17 Stats., 24.) And claimants say that they are advised, and therefore aver, that there was no authority of law for the deduction of said sum of $249,168.41, or the appropriation thereof, to the reimbursement of the United States of expenses incurred and paid on account of said
4 tribunal at Geneva; but, on the contrary thereof, the same should have been distributed among the said judgment creditors of the second class, and is now subject to said distribution under said act. And they are advised, and therefore aver, that the said deduction of $249,168.41 was and is in violation of the provisions and requirements of the said act of June 2, 1886. And claimants aver that they have demanded of the Secretary of State and the Secretary of the Treasury, and of the accounting officers of the Treasury Department the distribution of the proportion of the said sum of $249,168.41, which is due to them on account of their said judgment; which said payment, so demanded, has been refused.

8. And claimants further represent and aver that, by reason of the said deduction of the said sum of $249,168.41, there was distributed, pro rata, upon the said judgments of the second class thirty-five and two thousand two hundred and seventy-six ten thousandths (35.2276) per cent. of the said amount of said judgments and interest; whereas the percentage of distribution should have been thirty-six and seven hundred and fifty-seven one thousandths (36.757) per cent. of the amount of said judgments and interest; whereby the said claimants have been deprived of their propor-

tionate share of the said sum of $249,168.41, to wit, the sum of $5,306.71, for which said sum the claimants demand judgment.

9. Claimants further aver that no assignment or transfer of said claim, or any part thereof, or interest therein, has been made, and that they are justly entitled to the said sum of $5,306.71, after allowing all just credits and set-offs, for which said sum they demand judgment.

STATE OF RHODE ISLAND,
County of Newport, ss:

Before me, Edward Newton, a notary public in and for the
5 county and Commonwealth aforesaid, on this the 1st day of October, 1887, personally came William G. Weld, one of the claimants named in the foregoing petition, who, being duly sworn, on his oath says that he has heard the foregoing petition read, and knows the contents thereof; that the facts therein stated he believes to be true, and that the amount claimed, to wit, the sum of $5,306.71, is due to claimants, after allowing all just credits and off-sets; and further saith not.

WILLIAM G. WELD.

STATE OF RHODE ISLAND,
County of Newport:

Subscribed and sworn to before me, a notary public, this 1st day of October, 1887.

[SEAL.] EDWARD NEWTON,
Notary Public.

Post-office address of William G. Weld, Boston, Mass.; and of Shellabarger & Wilson, Washington, D. C.

6 II.—*Traverse filed Nov.* 12, 1887.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
Assistant Attorney-General.

7 III.—*Findings of fact and conclusion of law.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

October 24, 1883, the claimants recovered judgment in the Court of Commissioners of Alabama Claims for $229,637.63, together with interest,

aggregating the sum of $346,982.46, such judgment being one of the second class named in the act of Congress entitled "An act re-establishing the Court of Commissioners of Alabama Claims, and for the distribution of the unappropriated moneys of the Geneva award, approved June 5, 1882" (22 Stat. L., 98), and duly certified and transmitted to the Secretary of the Treasury as provided by said act.

II.

The aggregate amount of judgments of the second class rendered by said court, re-established by said act, including interest, was $16,292,607.26, and the aggregate amount of judgments of the first class, including interest, was $3,350,947.51.

III.

The Secretary of State, in pursuance of the provisions of the fourth section of the act of June 2, 1886, entitled "An act to provide for closing up the business and paying the expenses of the Court of Commissioners of Alabama Claims, and for other purposes" (24 Stat. L., 77), found and estimated the value of the furniture named in said section to be $800, and the same was credited to the fund to be distributed under said act; and the Secretary of State, with the assistance of the clerk of said court, under the provisions of said section 4 of said act, estimated the cost and expenses therein mentioned at $15,000, and the same was charged to said fund.

IV.

Under the provisions of section four of said act of 1886, the accounting officers of the Treasury, for the purpose of making distribution of the balance of the Geneva Award Fund to the judgment creditors as
8 therein required, stated the account as follows, including therein as chargeable to said fund, and deducting therefrom the "expenses of the tribunal of arbitration at Geneva" ($249,168.41).

V.

By an act to provide for closing up the business and paying the expenses of the Court of Commissioners of Alabama Claims, and for other purposes.
Approved June 2, 1886.

118 Payment of judgments Court of Alabama Claims		$5,739,495.41
THE GENEVA AWARD FUND.		
Amount paid by Great Britain		$15,500,000.00
Accretions.		
Premiums on first bonds sold, $8,350,000	$992,552.19	
Premium on remaining bonds sold, $7,150,000	385,100.07	
	1,377,652.26	
Accumulated interest	2,527,105.89	
Estimated value of furniture added, as provided in section 5, act of June 2, 1886	800.00	
		3,905,558.15
		19,405,558.15

Expenditures.

Judgments paid, 1st class, 1876		$6,641,287.26	
" " do. 1877		2,674,465.93	
" " do. 1885		3,325,905.68	
" " do. 1886, paid prior to date of act June 2, 1886		25,041.83	
Total judgments of class one paid		12,666,000.70	
Salaries and expenses, 1875	$84,374.70		
" " 1876	112,915.03		
" " 1877	55,435.99		
" " 1878	505.40		
" " 1883	152,996.05		
" " 1884	181,400.00		
" " 1885	99,484.09		
to Dec. 31, 1885	30,109.40		
	717,220.66		
Allowances on accounts to Dec. 31, 1885, authorized by sec. 1, act of June 2, 1886	13,842.86		
Amounts paid for services to Dec. 31, 1885, under sec. 1, act of June 2, 1886	3,659.21		
Salaries and expenses to June 30, 1886, as estimated under section 4, act of June 2, 1886	15,000.00		
	749,722.73		
Advertising sale of bonds, 1876	470.90		
		750,193.63	
Total expenditures		13,416,894.33	
Expenses of Tribunal of Arbitration at Geneva		249,168.41	
			$13,666,062.74
Balance to credit of Geneva award fund			5,739,495.41
Judgments, class two, principal		10,692,696.70	
interest		5,599,910.56	
Total amount of judgments of class two		16,292,607.26	

Making the percentage payable on said balance of $5,739,495.41 equal to .3522760549.

9 ACCOUNT OF THE GENEVA AWARD FUND STATED ACCORDING TO THE ACT OF JUNE 2, 1886. (24 Stat., p. 78.)

Balance stated, as per section 5	$9,703,904.89	
Premium sale of bonds, as per section 5	385,100.07	
	$10,089,004.96	
Estimated value of furniture, as per section 5	800.00	
		$10,089,804.96
(Amount actually received and covered into the Treasury, $1,474.68.)		
Deduct salaries and expenses from Dec. 31, 1885, to June 30, 1886, as estimated under section 4	$15,000.00	
Deduct amounts audited by the accounting officers before the passage of the act of June 2, 1886, and paid after Jan'y, 1886, for services to Dec. 31, 1885, chargeable to the fund under section 1	3,659.21	
Deduct allowances made on unsettled accounts by the accounting officers after the passage of the act of June 2, 1886, for services to Dec. 31, 1885, authorized by section 1 (which includes Allen's accounts under section 2)	13,842.86	
Deduct other expenses of the court:		
Salaries and expenses, 1875	84,374.70	
1876	112,915.03	
1877	55,435.99	
1878	505.40	

Deduct other expenses of the court—continued.		
Salaries and expenses, 1883	$152,996.05	
1884	181,400.00	
1885	99,484.09	
to Dec. 31, 1885	30,109.40	
Advertising sale of bonds in 1876	470.90	
		$750,193.63
		$9,339,611.33
Deduct further judgments, 1st class, paid in 1885	$3,325,905.68	
1886	25,041.83	
		3,350,947.51
		$5,988,663.82
(Judgments, first class, paid in 1876 and 1877, already deducted in reaching above balance of $9,703,904.89.)		
Deduct expenses of Tribunal of Arbitration at Geneva		249,168.41
Balance to credit of fund		$5,739,495.41

Total expenditures to date (April 25, 1887) from this balance, $5,739,265.29, leaving the sum of $230.12 unexpended.

VI.

The claimants were paid their proportion of said balance as so stated by the accounting officers, being 35.227,605,49 per cent. of their said judgment, but have received no part of that portion of said fund, which was so retained to reimburse the expenses of the Tribunal of Arbitration at Geneva, $249,168.40. If said last-named sum is not legally chargeable to said fund the claimants' proportion thereof would be $5,306.53, which the defendants have not paid and which they refuse to pay.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimants are entitled to recover the sum of $5,306.53.

10 IV.—*Opinion of the court.*

RICHARDSON, Ch. J., delivered the opinion of the court:

The only defense set up in this case is want of jurisdiction on account of the provisions of section 1066 of the Revised Statutes, which is as follows:

"SEC. 1066. The jurisdiction of the said court [of Claims] shall not extend to any claim against the Government not pending therein on December one, eighteen hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes."

The argument of the defendants is that as the claimants recovered judgment in the Court of Commissioners of Alabama Claims re-established by the act of June 5, 1882, ch. 195 (22 Stat. L., 98), which was payable by section seven of that act "out of the sum of money paid to the United States pursuant to article seven of the treaty of Washington, and accruing therefrom, not appropriated to claims proved under the provisions of said chapter four hundred and fifty-nine [18 Stat. L., 245], or any act extending the time for the filing of claims thereunder," and are now seeking to recover part of that judgment, which they allege is due and unpaid; there-

fore their claim is one "growing out of or dependent upon" a treaty stipulation entered into with "Great Britain," called the treaty of Washington. (17 Stat. L., 863.)

We are unable to find any stipulation of that treaty out of which the present claim grew or upon which it is dependent. It is true that Great Britain agreed to pay to the United States such sum as should be awarded by arbitrators to be appointed as therein prescribed, that such arbitrators were appointed and did award to the United States a sum in gross ($15,500,000) for all the claims referred to it, and that the United States received the money, and it was covered into the Treasury as a separate fund.

But there is no stipulation by which the United States agreed how the money or any part of it should be disposed of; nor did they become liable upon an implied assumpsit, growing out of the provisions of the treaty, to distribute the money to any individuals whatever. (Atocha's Case, 17 Wall., 439; Baron De Bode's Case, 8 Q. B., 208–285; 13 Q. B., 364; Rustomjee *v.* The Queen, 1 Q. B. Division, 487; 2 Q. B. Division, 69; Burnand *v.* Rodocanachi's Sons & Co., 5 C. P. D., 424; 7 House of Lords Appeal Cases, 333.)

We so held in the Great Western Insurance Co. Case (19 Ct. Cls., 206), and on appeal the Supreme Court said: "The opinion of the learned Chief-Justice [Drake] of the Court of Claims is an able presentation of that view." (112 U. S. R., 193.)

Certainly the present claim does not depend upon any treaty stipulation, and if in any vague and indefinite sense of the words it "grew out of" the stipulations of the treaty because it may be supposed that the United States would never have recognized the claim unless they had received by treaty the money which constitutes the fund out of which it is made payable by statute, that is far too remote "a growing out of treaty stipulations" to have been within the contemplation and meaning of section 1066 of the Revised Statutes. The fund, but not the claim to participate in its distribution, grew out of the treaty stipulations.

The object of that provision was no doubt to prevent this court from
11 making decisions interpreting and enforcing obligations of treaties by which the diplomatic affairs might be complicated, and was not to withdraw from its ordinary jurisdiction claims founded on laws of Congress appropriating to individuals money obtained by treaty as to which claims no stipulations of a treaty could possibly be involved. There is little or no difference between the phrases "growing out of" and "dependent upon." Claims that are dependent upon treaty stipulations necessarily grow out of them, and we can not conceive of a case growing out of such stipulations which must not be dependent upon them to a greater or less degree. The word "or" in this connection may not inappropriately be interpreted as meaning "and," so that the whole may be taken as one phrase, "growing out of and dependent upon."

The present claim, in fact and in law, is founded wholly upon the laws of Congress, and in deciding upon its merits we need not even examine or refer to the treaty or anything done under it.

The act of June, 1882, ch. 192 (22 Stat. L., 98), provided that judgments of the Court of Commissioners of Alabama Claims, of which that of the claimants is one, should be paid out of the sum of money paid to the

United States pursuant to article seven of the treaty of Washington, without other references to the treaty.

The controversy grows out of the statement and settlement of accounts by the accounting officers of the Treasury in the ordinary line of their duty under an act of Congress, the interpretation of which is the only issue between the parties.

The act of June 2, 1886, ch. 416 (24 Stat. L., 77), by section 5, provided how the account should be stated for the purpose of distribution of the fund among the judgment creditors. It specified the amount of the fund remaining in the Treasury and what deductions therefrom should be made and how such deductions should be determined. The amounts of those several deductions were fixed by the officers to whom that duty was intrusted, and it only remained for the accounting officers to so state the account and to pass the claims thereon according to the pro rata distribution provided by the statute. No discretionary powers were given to them, and their duties were the same as in other cases of accounting, in which their action merely directs that money shall be paid out of the Treasury by warrant, but does not affect the legal rights of the parties. (McKnight's Case, 13 Ct. Cls. R., 292; Longwill's Case, 17 Ct. Cls. R., 288, 291.)

They charged against the fund out of which the claimants' judgment was payable by statute, $249,168.41, expenses of tribunal of arbitration at Geneva. The claimants are seeking to recover a proportionate share of that amount, as improperly deducted by the accounting officers from the fund to be distributed.

The defendants rely upon the case of the Great Western Insurance Co., as decided by the Supreme Court (112 U. S. R., 193).

But in that case the claimant corporation was not seeking to recover under any law of Congress, but was attempting to enforce an alleged implied assumpsit on the part of the United States, growing out of and dependent upon the stipulations of the treaty of Washington, notwithstanding the laws of Congress, which expressly excluded its claim from consideration and from payment out of the fund in controversy.

12 Instead of founding its claim upon a law of Congress, as do the present claimants, the company invoked the jurisdiction of this court to set aside and annul the statute provisions. The two cases proceed upon exactly opposite grounds.

In our opinion this court is not excluded from the jurisdiction of the present case by reason of section 1066 of the Revised Statutes, even if that section be in force and unrepealed. But it is a serious question whether that section is now in force.

The petition in this case was filed October 4, 1887, and must therefore be governed by the provisions of the act of March 3, 1887, ch. 359 (24 Stat. L., 505). The first section of the act gives this court jurisdiction in law and equity, among other matters, of all claims founded upon any law of Congress or upon any contract with the Government of the United States. It excepts only claims for pensions, war claims, claims which accrued more than six years before suit brought, and claims rejected, etc., by other tribunals authorized to determine the same. It makes no exceptions of claims growing out of, or dependent upon, any treaty stipulation, and by section sixteen it repeals all laws and parts of laws inconsistent with

that act. Whether or not section 1066 of the Revised Statutes is repealed by that act it is not necessary to determine, and we express no opinion thereon, as we hold that the section does not in any event apply to the present case.

On the merits it can hardly be doubted, we think, that the accounting officers were in error in charging to and deducting from the fund the expenses of the Geneva tribunal of arbitration.

Section five of the act of June 2, 1886 (24 Stat. L., 77), fixes the amount of the fund and specifies exactly what shall be deducted from it, and provides that the balance shall be distributed to the judgment creditors. The item thus deducted was not among those thus specified.

Congress previously provided for the payment of the expenses of that tribunal out of any money in the Treasury not otherwise appropriated (act of Dec. 21, 1871, ch. 4, 17 Stat. L., 24), and has never made them chargeable to this fund. The claimants are entitled to their share of the amount thus improperly deducted, and judgment will be entered in their favor for $5,306.53.

NOTT and WELDON, JJ., were absent when this case was tried and took no part in the decision.

13 V.—*Judgment of the court.*

At a Court of Claims held in the city of Washington on the 6th day of February, 1888, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimants, and do order, adjudge, and decree that the said William G. Weld, Frederick Baker, and George W. Weld, surviving partners of William F. Weld and Company, do have and recover of and from the United States the sum of five thousand three hundred and six dollars and fifty-six cents ($\$5{,}306\frac{56}{100}$).

BY THE COURT.

14 VI.—*Application of defendants for and allowance of appeal.*

WILLIAM G. WELD, FREDERICK BAKER, AND George W. Weld, partners, &c., of William F. Weld and Co.,
vs.
THE UNITED STATES. } No. 15767.

From the judgment rendered in the above-entitled cause on the 6th day of February, 1888, in favor of the claimant, the defendants, by their Attorney-General, on the 8th day of February, 1888, make application for and give notice of an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
Asst. Atty. General.

Filed and allowed in open court.
February 8, 1888.

WILLIAM A. RICHARDSON,
Chief Justice.

15 In the Court of Claims.

WILLIAM G. WELD, FREDERICK BAKER, AND George W. Weld, surviving partners of the firm of William F. Weld and Company,
vs.
THE UNITED STATES.
No. 15767.

I, John Randolph, assistant clerk of the Court of Claims, do certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and of the conclusion of law thereon, of the opinion of the court, of the judgment of the court, of the application of the defendants for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 17th day of February, A. D. 1888.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 1366. The United States, appellant, *vs.* William G. Weld, Frederick Baker, and George W. Weld, surviving partners of William F. Weld & Company. Court of Claims. Filed February 20, 1888.

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In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES
vs.
WILLIAM S. WELD, FREDERICK K. Baker, and George W. Weld, surviving partners of the firm of William F. Weld & Co.

No. 1366.

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[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 1366. The United States, appellant, *vs.* William G. Weld, Frederick Baker, and George W. Weld, surviving partners of William F. Weld & Company. Court of Claims. Filed February 20, 1888.

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In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES *vs.* WILLIAM S. WELD, FREDERICK K. Baker, and George W. Weld, surviving partners of the firm of William F. Weld & Co.	No. 1366.

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THE UNITED STATES
v.
WILLIAM S. WELD, FREDERICK K. Baker, and George W. Weld, surviving partners of the firm of William F. Weld & Co. } No. 1366.

STATEMENT.

The claimants recovered judgment in the Court of Commissioners of Alabama Claims for $229,637.63, together with interest, aggregating the sum of $346,982.46, such judgment being one of the second class named in the act of Congress entitled "an act re-establishing the Court of Commissioners of Alabama Claims, and for the distribution of the unappropriated moneys of the Geneva award," approved June 5, 1882 (22 Stat. L., 98), and duly certified and transmitted to the Secretary of the Treasury as provided by said act. The aggregate amount of judgments of the second class rendered by said court, re-established by said act, including interest, was $16,292.26, and the aggregate amount of judgments of the first class, including interest, was $3,350,947.51.

The act of Congress approved June 2, 1886, entitled "An act to provide for closing up the business and paying the expenses of the Court of Commissioners of Alabama Claims, and for other purposes" (24 Stat. L., 77), provided that after deducting all proper sums for expenses, services, and other outlays and amounts of judgments of the first class and remaining unpaid, the residue should be paid out and distributed pro rata upon the judgments in favor of claimants of the second class.

In stating the account and arriving at a balance to be distributed, the accounting officers of the Treasury deducted from the fund $249,168.41, "the expenses of the tribunal of arbitration at Geneva."

The claimants received their share of the balance found by the Treasury to credit of the Geneva award fund. They bring this action to recover a pro rata proportion of the sum above stated as withheld on account of the expenses of tribunal of arbitration at Geneva. This is the only question in the case. The Court of Claims held that this amount was subject to distribution among claimants of the second class, and entered judgment for these claimants in the sum of $5,306.53.

From that judgment the United States appealed.

ASSIGNMENT OF ERRORS.

I.

The court erred in taking jurisdiction of this case.

II.

The court erred in rendering judgment for claimants.

BRIEF OF ARGUMENT.

I.—JURISDICTION.

The appellant submits that this claim is excluded from the jurisdiction of the Court of Claims by section 1066, Revised Statutes, because it is a claim growing out of and dependent upon treaty stipulations.

In the case of *Meade* v. *United States* (9 Wall., 691), it was greatly doubted whether the claim would not have been excluded from the jurisdiction of the court but for the passage of a joint resolution, by which Congress, in express terms, referred the claim to that court for adjudication; because the claim was *set up* under a treaty, and although it was decided it did not come within the stipulations of the treaty.

In *Atocha's Case* (17 Wall., 439, 444), this court, construing section 1066, said:

> All the cases of which the court could subsequently take cognizance, by either the original or amendatory act, were cases arising out of contracts or transactions between the Government or its officers and claimants; and in their decision the court was to be governed by those established rules of evidence which determine controversies between litigants in the ordinary tribunals of the country. Those acts have since then applied only to claims made directly against the United States, and for the payment of which they were primarily liable, if liable at all, and not to claims against other governments, the payment of which the United States had assumed or might assume by treaty.

In the *Great Western Insurance Company* v. *United*

States (112 U. S., 193, 197) this court, speaking of the same section, said:

> "This language is comprehensive and explicit. If the cause of action *grows out* of a treaty stipulation, the court can not entertain it. If it is *dependent* on any such stipulation the same result follows. In any ordinary or usual sense of the words here used, appellant's claim, as set forth in the petition, grows out of the stipulations of the Treaty of Washington. The allegation is, that the United States took charge of the claim of petitioner against Great Britain for the injuries inflicted by the Alabama and the Florida; that, by a treaty on that subject, Great Britain stipulated that she would pay this claim to the United States, as petitioner alleges, for the use of said petitioner. In accordance with said stipulation, Great Britain did pay it to the United States, and the purpose of payment under the treaty inhering in the receipt of the money constitutes the foundation of appellant's claim. The intervention of the Board of Arbitration and its award as a means of ascertaining the liability of Great Britain, does not change the fact that the final recognition and payment of the claim *grows out of the stipulation of the treaty.*
>
> In a still clearer sense it is obvious that this recognition of the claim by the award and its payment to the United States, were dependent on the treaty stipulation. Without the treaty the award would have bound nobody, and would have been at most a friendly recommendation. By virtue of the treaty it became a most solemn and important international obligation, whereby Great Britain became bound, as much as a nation can be bound, to pay the amount of the award, and, at the same time, became freed and discharged from any further liability on account of any claims of that class.

> The effort of counsel to ignore the treaty, the award and the receipt of the money by the United States as the foundation of appellant's claim, and rest the right to recover solely upon the act of March 31, 1877, by which the fund was changed from an investment in government bonds and paid into the government treasury, is too fanciful for serious consideration. If the government had not become liable, by reason of the original receipt of the money from Great Britain, under the treaty, by which that country was discharged and released from the claim of plaintiff, it is difficult to comprehend how it became liable by a mere change in the manner of keeping the account. Whether the United States was liable on the bonds held in its own treasury vaults, or on account of the actual money represented by those bonds in the same vaults, cannot be material in estimating the nature and extent of that obligation.

Alling v. *United States* (114 U. S., 562) was the case of a claim which Belden & Co. had for seizure and confiscation of goods by the Mexicans during or shortly after the Mexican war. The goods having been imported into Matamoros while that city was in possession of the American forces, on which Belden & Co. had paid duties to the amount of $18,347, the United States refunded this sum to Belden & Co. and took an assignment *pro tanto* of their claim against Mexico. The commission to adjust the claims under a treaty made an award to Belden & Co. of $53,099.25, of which the United States might retain the sum of $35,920.81 on account of the tax refunded and interest. The claimants in that case, having received the sum specifically awarded to them, appealed to the Secretary for the whole or a part of the sum for customs duties

which was awarded to the United States under the assignment of Belden & Co. This was refused, and the suit was brought to enforce the claim.

> It is clearly [said this court] a claim founded on and growing out of a treaty with a foreign nation, within the provisions of Rev. Stat., sec. 1066. It is in all respects like the case of the *Great Western Insurance Co.* v *United States* (112 U. S. 193), which holds that the Court of Claims had no jurisdiction by reason of that section.
>
> That was a case of a claim submitted to the United States for reclamation against Great Britain. A treaty between the two powers provided, as in the present case, for an arbitration, under which the claim was allowed and paid to the United States. On appeal from the Court of Claims we decided that it was, within the meaning of Rev. Stat. sec. 1066 "a claim *growing out of and dependent* on a treaty stipulation entered into with a foreign government" of which that court could not entertain jurisdiction.
>
> The present case is stronger than that, because the act of Congress of June 18, 1878, 20 Stat. 144, confers on the Secretary of State the authority to distribute these awards among the several claimants. *Frelinghuysen* v. *Key*, (110 U. S. 63). Not only is the Court of Claims forbidden to entertain jurisdiction of this claim, but the Secretary of State is by law authorized and directed to do all that can be done for claimants, without further legislation.

The argument that, because a statute was enacted which treated of the disposition of the award under the treaty, therefore jurisdiction obtained under the general provisions of section 1059 is similar to that urged upon this court in the above cases and there held unsound.

The statutes providing for the reception, custody, and distribution of the gross sum paid to the United States by Great Britain hang upon the treaty and were necessary for carrying out its provisions and obligations. This claim of Weld & Co. was for spoliations, which were redressed through the treaty. The claims, of which this was one, of the citizens of the United States, were the basis of the friendly negotiations at Geneva, and made the measure of the award.

The Government recognized the moral right of the injured subjects to receive the fund so created. It is true there is no stipulation by which it became liable to distribute the money to any individuals; none was necessary.

The first article of the treaty recites the object of the contracting powers to be to adjust all claims for depredations committed by the *Alabama* and other cruisers. The decision of the tribunal declared that all the claims referred to in the treaty were fully, perfectly, and finally settled. The claims submitted to the Court of Commissioners of Alabama Claims were those directly resulting from damage caused by the so-called insurgent cruisers *Alabama*, *Florida*, and their tenders, and by the *Shenandoah* after a certain date. The treaty was the mother of all the claims and all the legislation. They grew out of it, and whatever vitality they had as claims against the United States was drawn from that life-giving source.

The first act, March 3, 1873 (17 Stat. L., 601), was an act for the creation of a court for the adjudication and disposition of certain moneys received into the Treasury under an award made by the tribunal of arbitration, etc.;

and provided that the amount awarded should be paid into the Treasury and used to redeem, so far as it may, the public debt of the United States; and the amount equal to the debt so redeemed should (shall) be invested in the five per cent. registered bonds of the United States, to be held subject to the future disposition of Congress.

The act for the creation of a court for the adjudication and disposition of certain moneys received into the Treasury under an award made by the tribunal of arbitration, etc., approved June 23, 1874 (18 Stat. L., 245), recites the exact language of the award, and enacts (sec. 11)—

> That it shall be the duty of the said court to receive and examine all claims admissable under this act that may be presented to it, directly resulting from damage caused by the so-called insurgent cruisers *Alabama*, *Florida* and their tenders, and * * the insurgent cruiser *Shenandoah*, etc.

The act provides for judgments and for their payments.

> SEC. 14. That the said court shall report to the Secretary of State a list of the several judgments and decisions made by it, a certified copy of which shall, upon the conclusion of the business of the said court, be by him transmitted to the Secretary of the Treasury, who shall thereafter, as soon as may be and upon such notice and in such manner as he shall prescribe, pay the said judgments, together with interest at the rate of four per centum per annum on the amount of such judgments from the date certified unto the persons, respectively, in whose favor the same shall have been made, or to their respective legal representatives, in full satisfaction and discharge of said judgments: *Provided*, That if the sum of all the judgments rendered by the said court, together with interest, shall exceed the amount received into the Treasury of the Uni-

ted States as proceeds of the sum to be paid by Great Britain, by virtue of the said decision and award, then the Secretary of the Treasury shall distribute, in ratable proportions, among the parties in whose favor judgments shall have been rendered, or to their legal representatives, such moneys as have been received into the Treasury, according to the proportions which their respective judgments shall bear to the whole amount received into the Treasury as aforesaid, which payments shall be in full satisfaction and discharge of such claims and judgments.

SEC. 15. That the Secretary of the Treasury is hereby authorized and required to pay the said respective judgments of said court, out of any such money in the Treasury not otherwise appropriated; and for that purpose he is hereby authorized when necessary to issue and sell at public sale, after ten days' notice of the time and place of sale, at not less than par in coin, a sufficient amount of coupon or registered bonds of the United States, in such form as he may prescribe, of denominations of fifty dollars, or some multiple of that sum, redeemable in coin of the present standard value, at the pleasure of the United States after ten years from the date of their issue, and bearing interest payable quarterly in such coin at the rate of five per centum per annum; and upon the payment, from time to time, of the said respective judgments of said court as before provided, the bonds of the United States mentioned in the act approved March third, eighteen hundred and seventy-three, entitled "An act for the creation of a court for the adjudication and disposition of certain moneys received into the Treasury under an award made by the tribunal of arbitration constituted by virtue of the first article of the treaty concluded at Washington the eighth of May, anno Domini eighteen hundred and seventy-one, between the United

States of America and the Queen of Great Britain," shall be canceled and extinguished to the amount of such payments.

By section 7 of "An act re-establishing the Court of Commissioners of Alabama Claims," approved June 5, 1882 (22 Stat. L., 98), it is enacted:

> That the judgments rendered by said court under this act shall be paid by the Secretary of the Treasury out of the sum of money paid to the United States pursuant to article seven of the treaty of Washington, and accruing therefrom, not appropriated to claims proved under the provisions of said chapter four hundred and fifty-nine, or any act extending the time for the filing of claims thereunder.
>
> SEC. 9. That the said court, after all its judgments and decisions have been rendered, shall transmit to the Secretary of State a list of such judgments and decisions, stating the class and amount, with interest at four per centum from the time the loss accrued to the thirty-first of March, eighteen hundred and seventy-seven, a certified copy of which shall be by him transmitted to the Secretary of the Treasury, who shall thereafter, as soon as may be, and upon such notice and in such manner as he shall prescribe, pay the said judgments out of any money in the Treasury not otherwise appropriated: *Provided, however*, That such payments shall be made in accordance with the provisions of the preceding sections: *And provided further*, That the whole amount paid out shall not exceed the amount remaining of the Geneva award and interest, as it was when actually covered into the Treasury.

The legislation upon this subject closed with the act of June 2, 1886, "An act to provide for the closing up the business and paying the expenses of the Court of

Commissioners of Alabama Claims, and for other purposes" (24 Stat. L., 77). In that act it is enacted:

> SEC. 5. That the amount which shall be paid out and distributed in payment and satisfaction of the judgments of the first and second class which are now existing as rendered by the said court against the Geneva award fund, and in payment of the expenses, salaries, and other outlays contemplated and provided for in this act, and in the act reestablishing the said court, approved June fifth, eighteen hundred and eighty-two, shall be ascertained in the following manner:
>
> * * * * * * *
>
> and the balance shall be applied as follows: First, to the payment of the judgments of the first class yet remaining unpaid as provided in said act, approved June fifth, eighteen hundred and eighty-two, and the residue shall be paid out and distributed *pro rata* upon the judgments in favor of claimants of the second class, as provided in said last named act. And the amounts so ascertained as aforesaid are, for the purpose of making the payment aforesaid, hereby appropriated out of any moneys in the Treasury not otherwise appropriated.

The claim of the claimants is that their demand arises "under this act of Congress," and has no connection with the treaty; or if it has any, it is of so indefinite and remote a character as to make it independent. The fund, but not the claim to participate in its distribution, they say, grew out of the treaty stipulations. These have never been separated. Their relations are mutual and dependent. The amount of the award was a specific fund in the Treasury for distribution to a designated class of persons.

We have seen that Congress always kept this in view and legislated to that frequently-expressed end.

The cases cited by counsel are of an entirely different and distinct description. They are grouped and commented on in an able opinion in *Blount* v. *United States* (21 C. Cls. R., 274). They were, to use the language of Atocha's case, for "claims made directly against the United States, and for which they were primarily liable, if liable at all, and not to claims against other governments, the payment of which the United States had assumed or might assume by treaty."

The defendant, on the other hand, insists that the claim here is completely within the principle laid down in the Great Western Insurance Company and the Alling cases.

II.—Repeal of Section 1066.

It has been strenuously suggested that section 1066, Revised Statutes, is repealed by the act of March 3, 1887. The section is not repealed expressly in the statute.

Before the passage of the act of 1887 the Court of Claims had general jurisdiction to hear and determine:

> First. All claims founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, and all claims which may be referred to it by either House of Congress.
>
> Second. All set-offs, counter-claims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever, on the part of the Government of the United States against any person making claim against the Government in said court.

Third. The claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible.

[*Provided*, That the jurisdiction of the Court of Claims shall not extend to any claim against the United States growing out of the destruction or appropriation of, or damage to, property by the Army or Navy engaged in the suppression of the rebellion.]

That court had also jurisdiction (section 1063) of claims involving disputed facts or controverted questions of law, of the same subject-matter and character as cases under the general jurisdiction, where the amount in controversy exceeded three thousand dollars, or where the decision would affect a class of cases or furnish a precedent for the future action of any Executive Department in the adjustment of a class of cases without regard to the amount involved in the particular case, or where any authority, right, privilege, or exemption was claimed or denied under the Constitution of the United States, which might be transmitted to them by the head of any Executive Department for trial and adjudication.

That court also had jurisdiction (22 Stat. L., 485) of any claim or matter pending before any committee of the Senate or House of Representatives, involving the investigation of facts which may be transmitted to them by such committee to report the facts; and of any claim or matter pending in any of the Executive Departments, involving controverted questions of fact or law, transmitted

by the head of a Department, to find and report the facts and conclusions of law.

That court also had jurisdiction conferred, under special acts of Congress, in nominated cases, such as cases other than those arising under contracts, many of which were pending at the time of the act of 1887, and are still pending.

This court also had jurisdiction (23 Stat. L., 283) to examine and determine the validity and amount of claims of American citizens for spoliations committed by the French.

Besides the exceptions mentioned, section 1066, Revised Statutes, provides:

> The jurisdiction of the said court shall not extend to any claim against the Government not pending therein on December one, eighteen hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes.

The first section of the act of March 3, 1887 (24 Stat. L., 525), "An act to provide for the bringing of suits against the Government of the United States," enacts:

> That the Court of Claims shall have jurisdiction to hear and determine the following matters:
>
> First. All claims founded upon the Constitution of the United States or any law of Congress, except for pensions, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States

> either in a court of law, equity, or admiralty if the United States were suable: *Provided, however,* That nothing in this section shall be construed as giving to either of the courts herein mentioned, jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as "war claims," or to hear and determine other claims, which have heretofore been rejected, or reported on adversely by any court, Department, or commission authorized to hear and determine the same.
>
> Second. That the district courts of the United States shall have concurrent jurisdiction with the Court of Claims as to all matters named in the preceding section where the amount of the claim does not exceed one thousand dollars, and the circuit courts of the United States shall have such concurrent jurisdiction in all cases where the amount of such claim exceeds one thousand dollars and does not exceed ten thousand dollars. All causes brought and tried under the provisions of this act shall be tried by the court without a jury.

We apprehend that it will be urged that this section was intended to cover the whole subject of the jurisdiction of courts in the bringing of suits against the United States, and to state all the exceptions and limitations to the exercise of that jurisdiction. To sustain this position it is necessary to give to the doctrine of revision of a whole subject a comprehensiveness and force which it can not have in application to this class of statutes.

> The doctrine asserts no more than that the former statute is impliedly repealed, *so far* as the provisions of the subsequent statute are repugnant to it, or *so far* as the latter statute, making new provisions, is plainly intended as a substitute for it. Where the

> powers or directions under several acts are such as may well subsist together, an implication of repeal cannot be allowed. *Henderson's Tobacco*, 11 Wall., 652, 657. (*Daviess* v. *Fairbanks*, 3 How., 636, 646.)

Section 16 of the act of 1887 enacts that "all laws and parts of laws inconsistent with this act are hereby repealed." These words "inconsistent with" have been defined and illustrated. (*Jackson* v. *The State*, 12 Ga., 1; *People* v. *Durick*, 20 Cal. 94; *Com.* v. *Carpenter*, 100 Mass. ,204.)

Mr. Bishop deduces this rule: If the provisions of the former and present enactments are in direct contrariety, the repeal takes place, but only to the extent of the repugnance. If, on the other hand, by any reasonable contracting, expanding, cutting short, or extending of the old laws or the new, they can be brought into harmony without repeal, the interpretation should be so, and all suffered to stand together. (Bishop Wr. L., 152.)

The manifest intention of the act of 1887 was twofold: To confer concurrent jurisdiction with the Court of Claims upon the circuit and district courts; and because of that concurrent jurisdictions, to somewhat increase its scope and extent. The first clause of the first section was clearly a substitute for section 1059 Revised Statutes. Where there was an increase of jurisdiction, it was affirmatively and specfically conferred. Where there had been theretofore negative provisions, which were intended to be repealed, they were repealed by express words, as in the matter of the competency of witnesses. Would not section 1066 have been thus repealed if such had been the intention? Before the act of 1887 the statutes were con-

strued in *pari materia*. There was no repugnancy or inconsistency then. There is none now. At both times there were and are the general and specific laws which are in harmony. (*The Distilled Spirits*, 11 Wall., 356; *United States* v. *Freeman*, 3 How., 556; *Townsend* v. *Little*, 109 U. S., 504, 512.)

There is another consideration which fortifies and supports this view. It is fundamental that the Government can not be sued without its consent in courts of its own creation, and that it may prescribe the terms and conditions on which that consent is given. (*United States* v. *Clarke*, 8 Pet., 436, 444; *Cary* v. *Curtis*, 3 How., 236, 245; *Beers* v. *Arkansas*, 20 How., 527; *United States* v. *Lee*, 106 U. S., 196.)

The rule of strict interpretation applies, then, to statutes in this regard. Certainly, a law excluding jurisdiction will be held to be in force unless clearly and expressly repealed. If the Government will not permit itself to be sued, "save in instances forming conceded and express exceptions," and makes a statutory declaration that a certain class of cases is not within the exceptions, it will require as distinct and definite expression to include them.

It will be noted that the subject-matter of the jurisdiction in the Revised Statutes and this later statute is substantially the same. It is unnecessary to inquire what was the purpose of the prohibition of claims growing out of or dependent upon treaty stipulations. It can not be doubted that that purpose was as valid at the time of the passage of the act of 1887 as it was at the time of the passage of the act of 1863. The conditions were not changed. Claimants have recourse to Congress only.

The complaint in the case at bar is that in the ascertainment of the fund to be distributed the accounting officers made a deduction entirely unauthorized and without warrant of law, and what is really sought is the restoration of that amount so withheld to the sum to be apportioned. The money in the Treasury was a specific sum, originating in the payment by Great Britain of the award; the account was kept as a separate and distinct fund, known as the Geneva award fund.

If the position of the claimants is correct, the net amount to be distributed was the award, less the ascertained expenses of the Court of Commissioners. To determine that was merely ministerial. If an improper credit was refused or an unwarranted deduction made, it is submitted the Secretary of the Treasury could be constrained to correct the error by mandamus. There could be from claimants' standpoint no assumpsit against the Government upon which suit could be brought in the Court of Claims. (*Kendall* v. *United States*, 12 Pet., 524; *United States* v. *McLean*, 95 U. S., 750.)

Respectfully submitted.

ROBERT A. HOWARD,
Assistant Attorney-General.

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JAMES H. McKENNEY

IN THE

Supreme Court of the United States.

OCTOBER TERM 1887.

Number 1366.

THE UNITED STATES, Appellant,

vs.

WILLIAM G. WELD, FREDERICK BAKER, and GEORGE W. WELD, Surviving Partners of WILLIAM F. WELD & COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

Brief for Appellees, by

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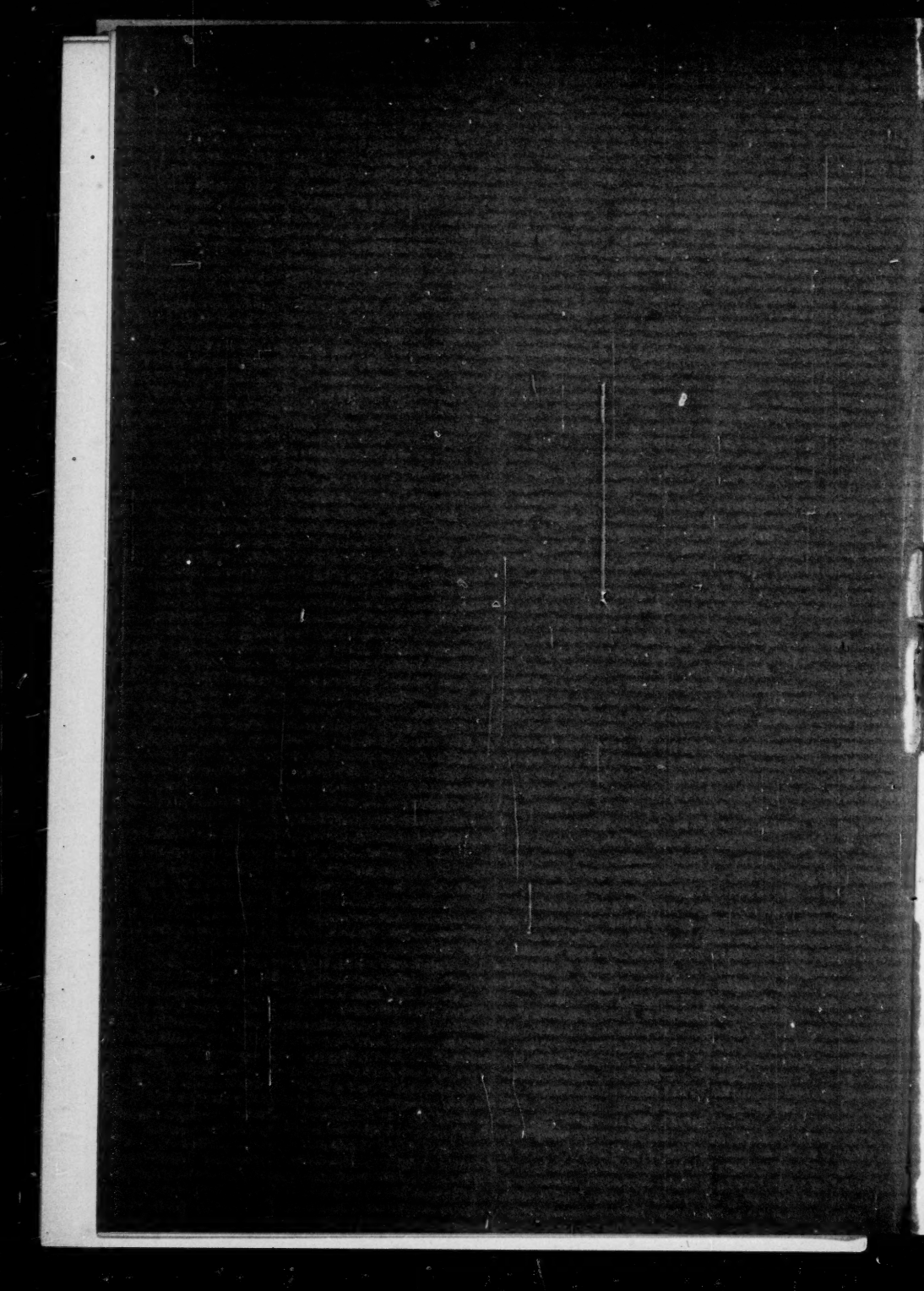

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No. 1366.

Appeal from the Court of Claims.

BRIEF FOR APPELLEES.

Although the facts which make up the history of this case are found condensedly stated in the findings of fact by the court below, (R., 3 to 6,) it may be of some service to restate the legislative and judicial history of this Geneva Award fund at the opening of this brief:

I. The Geneva Award was rendered in pursuance to the provisions of the treaty of Washington, proclaimed July 4, 1871, and was for $15,500,000. (Rev. Stats. of Public Treaties, page 355.)

II. The expenses of said tribunal at Geneva were appropriated for and paid under the act of Congress approved December 21, 1871. (17 Stats., 24; also, R., 9.)

III. The accounting officers of the Treasury, in stating the account and making the *pro-rata* distribution, in pay-

ment of judgments of the second class, which were paid under the provisions of the act of June 2, 1886, (24 Stats., 77, and see also appendix,) and in ascertaining the amount of said distributions, *subtracted* from the "Geneva Award Fund" balance in the Treasury, and which balance was ordered to be divided, by the said last-named act, $249,168.41. (See finding 4 and concluding part of finding 5; R., 4, 5, and 6.) And it is for the appellees' *pro-rata* part of this subtraction (alleged to be unauthorized by the said act of June 2, 1886) this suit is brought.

As said act of June 2, 1886, makes full and detailed provision regarding the manner in which the balance of the Geneva Award fund, payable on judgments of the second class, shall be arrived at, and is unmistakable in its provisions, it would seem that it was wholly unnecessary to insert, in this brief, a history of the Geneva Award legislation, for the purpose of aiding this court, in getting at what was the duty of the accounting officers in making up the amount of said fund.

The mandatory directions of said act of Congress of June, 1886, ought to have been a guide to the accounting officers, and will be a guide to this court. But said mandatory provisions were disregarded by the accounting officers in making said subtraction of $249,168.41 as expenses of the tribunal of arbitration at Geneva, and for this reason it may be possible that this court may desire to look into the history of this Fund. At all events, it will do no harm to here insert a reference to the statutes which controlled the management of that Fund.

IV. The first act of Congress providing for the receipt of the money from Great Britain, is the one approved March 3, 1873, (17 Stats., 601,) and provided that the money should be received from Great Britain and paid into the Treasury, and used to redeem, so far as may be, the public debt of the United States. And added a clause in these words:

"And the amount equal to the debt so redeemed shall be invested in five per cent. registered bonds of the United States, to be held subject to the future disposition of Congress."

A single bond was issued, dated May 1, 1871, for $15,500,000, and on its face declared it was in trust, to be held by the Secretary of the Treasury, subject to future disposition of Congress.

This said $15,500,000 bond, plus five per cent. interest thereon, and the other accretions, became, and were, "the Geneva Award Fund," and the statement of the accretions is found in finding No. 5, at bottom of page 4 of Record, and were $3,905,558.15.

V. The next act on the subject is that of June 23, 1874, (18 Stats., 245,) which created the first Alabama court; and it authorized judgments only of one class, as provided in section 11, to wit, claims for losses "*directly* resulting from damages caused by the so-called insurgent cruisers *Alabama*, *Florida*, and their tenders;" and also "claims, admissible under this act, directly resulting from damages caused by the so-called cruiser *Shenandoah* after her departure from Melbourne."

And the 14th section of the act provided for the payment of these judgments and interest in full, or if the Fund was insufficient, then *pro rata*. And the 15th section authorized the sale of five-per-cent. bonds for the purpose of paying the judgments. Various sales of bonds were made to meet judgments; and interest, premiums, &c., were allowed in keeping the account with the Fund, the details of which would be of no manner of service in this brief, as finding 5 gives all the results of these transactions.

VI. On the 24th of December, 1875, Congress extended the life of the court to the 22d of July, 1875. (19 Stats., 1.) On the 22d of July, 1876, Congress again extended the life

of the court to the 1st of January, 1877. (19 Stats., 96.) On the 15th of February, 1876, (19 Stats., 3,) Congress passed a law requiring the Alabama court to report to the Secretary of State the judgments rendered before the 22d of January, 1876; also those rendered after the 22d of January up to the 22d of July, 1876. And the third section of this act required the Secretary of State to transmit to the Secretary of the Treasury copies of said reports as to the amount of the judgments; and the Secretary of the Treasury was required to pay judgments, with interest at four per cent., from the date of the loss, as certified.

Under all these statutes judgments of the first class were rendered and paid in 1876 amounting to $6,641,287.26, and in 1877 amounting to $2,674,465.93, as stated at the top of page 5 of the Record.

VII. On the 5th of June, 1882, (22 Stats., 98,) Congress passed the act which revived the old Alabama court, giving to the new court the obligations, powers, and duties conferred on the old court by said act of 1874, except as modified by the new act. This new act divides the claims, of which it creates jurisdiction, into two classes. The claims of the first class were those resulting *directly* from damages, on the seas, by Confederate cruisers, during the rebellion. Claims of the second class were those which grew out of the payment of premiums for war-risks, whether paid to corporations, agents, or individuals, after the sailing of any Confederate cruiser.

The seventh section of this act provides that judgments under the act shall be paid, by the Secretary, out of money paid to the United States, pursuant to the seventh article of the treaty of Washington, and moneys *accruing therefrom*, not already appropriated to the payment of claims approved under said act of 1874, and the acts extending the duration of the old court.

The eighth section of this act of June 5th, 1882, requires

judgments of the first class to be first paid, and if not enough to pay them in full, then these first-class judgments to be paid in the proportion which they severally bear of the whole amount of said unappropriated sum; and if a surplus was left, after paying judgments of the first class, then the second-class judgments were required to be paid according to the proportions which they severally bear to the residue of said unappropriated sum, after the judgments of the first class are paid.

VIII. The next act is that of June 3, 1884, (23 Stats., 33,) which extends the duration of the new court to the 31st of December, 1885; and the third section of this act required the court to report to the Secretary of State (as soon as the court was satisfied that the balance remaining of the Geneva Award fund would be sufficient to pay first-class judgments in full) a list of the first-class judgments, and the Secretary of the State was to transmit a copy thereof to the Secretary of the Treasury, and the Secretary of the Treasury was required to pay out "of the unexpended balance of the said award, judgments of the first class, with interest at four per cent. from the time of the loss to the 31st of March, 1877."

The court was also required, from time to time, to report the other judgments of the first class to be transmitted in the same way to the Secretary of the Treasury.

IX. The finding 5 (R., 4, 5, and 6) gives the full history of the payments made of judgments of all classes and of the entire expenditure of the said Geneva Award Fund. Said finding 5 also gives the make-up of the said Geneva Award Fund and its accretions, amounting, in the aggregate, to $19,405,558.15. (See bottom of page 4 of the Record.)

It will be seen by this finding, number 5, that the aggregate of judgments of the second class, together with

the interest, is $16,292,607.26. It will also be seen, on the same page 5, that the amount of the balance of the Fund remaining, applicable, *pro rata*, to the payment of the said $16,292,607.26, principal and interest, of judgments of the second class, was found to be $5,739,495.41, after deducting the expenses of Tribunal of Arbitration at Geneva, such expenses amounting to $249,168.41, and that this would result in a *pro-rata* payment on judgments of the second class and interest, equal to a decimal of 35.22760549 of the face of the judgments of the second class and interest. (R., 5.)

X. It will be further seen, by inspecting said finding of fact number 5, that, under a heading, in the following words, "ACCOUNT OF THE GENEVA AWARD FUND, STATED ACCORDING TO THE ACT OF JUNE 2, 1886, (24 STATS., P. 78,)" the accounting officers of the Treasury found that the balance applicable to the payment of said aggregate of judgments and interest of the second class (to wit, the aggregate of $16,292,607.26) is $5,988,663.82, being just $249,168.40 *more*, if the balance is found "according to the requirements of the said act," than it was found to be on the preceding page, where the accounting officers did *not even profess* to be proceeding according to the requirements of said act of June 2, 1886.

In other words, the face of this return by the Treasury Department, apparently, shows an admission that it regarded the subtraction of the expenses at Geneva of $249,168.41, to be a subtraction not authorized by the said act.

XI. Finding of fact number 1 (R., 3 and 4) shows that the claimant's judgment in the present case was $346,982.46, being one of the second class.

The result of the whole matter is summed up in finding 6, (R., p. 6,) where it is found that claimant has been paid in full his *pro-rata* share of the Geneva Award fund, pro-

vided the said subtraction of the expenses at Geneva of $249,168.41 is authorized by said act of June 2, 1886, or by other law applicable in the case; and that if the said subtraction is illegal, then that appellee is entitled yet to be paid his *pro rata* of the subtraction, to wit, $5,306.53.

These facts now enumerated present the only question in the case, (outside of the questions of jurisdiction which we will consider,) to wit, was the said subtraction of said expenses of the tribunal at Geneva lawful? Or, on the other hand, is claimant entitled to his *pro-rata* share of said subtraction?

Stated in another way, the questions presented in this record are as follows:

1st. Congress directed the account to be made up in a specific way; directed just what additions should be made to, and subtractions from, the balance of the fund after paying claims of the first class, and directed that the amount thus ascertained should be divided *pro rata* between judgments of the second class, and appropriated the amount thus ascertained. But in making up the account there was deducted, in addition to the sums directed by the act to be deducted, the sum of $249,168.41, being the amount of expenses of the Geneva tribunal, which expenses theretofore had been appropriated for by Congress and paid.

The claimants in this case sue for their *pro-rata* share of this $249,168.41, and their right to recover depends upon the question whether or not that sum was rightfully deducted from the appropriation.

2d. Another principal question is, whether the Court of Claims had jurisdiction of the case—the Government alleging that it is a claim arising out of a treaty, and, therefore, within the exception mentioned in section 1066 Revised Statutes; the claimants contending that that section was repealed by the act of March 3, 1887 (24 Stats., 505); and, also, that even if it was not repealed, still the

court has jurisdiction, because this claim does not arise out of a treaty, but out of an act of Congress.

In presenting the case to the court upon the present appeal the appellees will, at the latter part of the brief, reproduce in this court substantially the brief which was presented in the court below. This re-presentation of said brief below is probably, as to most points, wholly unnecessary here, because of the fact that the appellant in the court below in effect, if not expressly, conceded (and possibly will here concede) that the moneys sued for in this case were required to be paid by the act of Congress approved 2d of June, 1886, which is set forth at the end of this brief in the appendix, and was withheld in violation of said law, and is owing to claimants. The *only* question made in the court below was one disputing the jurisdiction of the Court of Claims in this case, and basing that dispute *exclusively* upon the provision contained in section 1066 of the Revised Statues, which reads:

"The jurisdiction of said court shall not extend to any claims against the Government not pending therein on December 1, 1862, growing out of, or dependent on, any treaty stipulation entered into with foreign nations or with the Indian tribes."

In the brief in the court below we did not consider the effect of this section upon the question of jurisdiction because, when the brief was prepared, no such question had been raised by the Government. The only point, relating to jurisdiction, which was discussed in the brief below was whether the provision of section 1059 of the Revised Statutes, giving the Court of Claims "jurisdiction to hear and determine" * * * "all claims founded upon any law of Congress," conferred jurisdiction of the subject-matter embraced in the present action. As to *that* matter no question was made below by defendant.

There was, moreover, in the court below, no dispute

about the facts, and the facts as found and appearing in the present record (R., pp. 3 to 6) were conceded.

In view of the facts now stated, we shall add to the brief below, which is hereinafter in part reproduced, some considerations bearing upon what was the only disputed point in the trial in the court below, namely, whether said section 1066 excludes the jurisdiction in the present case.

The first proposition which we submit, relating to this question of jurisdiction, is based upon the provisions of section 1 of the act of Congress of the 3d of March, 1887, chapter 359, (24 Stats., 505,) entitled "An act to provide for the bringing of suits against the Government of the United States." Our proposition is that this act is manifestly one designing to revise and supersede, by substitution, the *entire* law creating and defining the jurisdiction of the Court of Claims. It is not an act supplementary and additional or in the nature of amendment to the former laws defining that jurisdiction; but is an act palpably covering the whole field of jurisdiction, revising it, and greatly enlarging it. Its words are:

"All claims founded upon the Constitution of the United States, or any law of Congress, except for pensions, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however*, That nothing in this section shall be construed as giving to either of the courts herein mentioned, jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as 'war claims,' or to hear and determine other claims, which have heretofore been rejected, or reported on adversely by any court, department, or commission authorized to hear and determine the same."

In view of the provisions of this section, and the other provisions of this law, and *especially section* 16, *repealing all*

laws and parts of laws inconsistent with such act, our proposition is that this section 1066 of the Revised Statutes is superseded and repealed.

In the opinion of the court below (R., pp. 8, 9) will be found a few sentences which express the grounds upon which we base this claim that section 1066 is repealed. The court says:

"The first section of the act gives this court jurisdiction in law and equity, and, among other matters, of all claims founded upon any law of Congress, or upon any contract with the Government of the United States.

"It excepts only claims for pensions, war claims which accrued more than six years before the suit brought, and claims rejected, &c., by other tribunals authorized to determine the same. It makes no exceptions of claims growing out of, or dependent upon, any treaty stipulation, and, by section 16, it repeals all laws and parts of laws inconsistent with that act. Whether or not section 1066 of the Revised Statutes is repealed by that act, it is not necessary to determine, and we express no opinion thereon, as we hold that the section does not, in any event, apply to the present case."

Although the court below, very properly, declined to express an opinion regarding the question of repeal of said section 1066, yet it is quite apparent from this statement, by the court, that it was inclined to that opinion; and the reason why it was so inclined is quite apparent in the sentence quoted. Indeed, the court says expressly "*it is a serious question whether that section is now in force.*"

The new law palpably is designed, as already remarked, to be a revision and redefinition of the entire scope and field of the statutes affecting the jurisdiction of the Court of Claims; including, in such revision and redefinition, the cases excepted from the jurisdiction as well as those included. To allow the cases stated in section 1066 to be excluded from the jurisdiction, is to violate the express terms of section 1 of the act of the 3d of March, 1887,

where jurisdiction is conferred upon the Court of Claims of "all claims founded upon the Constitution of the United States or any law of Congress, except for pensions, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States, or for damages liquidated or unliquidated in cases not sounding in tort; *in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable.*" "Law and equity" do not, in cases between man and man, exclude rights growing out of treaties; hence section 1066 is *repugnant* to the clause giving the Court of Claims that broad jurisdiction, *as at law or in equity*, which courts have, between man and man, in that class of cases coming within the jurisdiction created by this section 1.

This provision cannot stand, broad and general as it is, if section 1066 is also to stand.

"Where a statute, evidently, is intended to revise the whole subject treated in a former statute, and is to be a *substitute* therefor," [as section 1 of the act of the 3d of March, 1887, palpably is, *so far as relates to the jurisdiction of the Court of Claims*,] "it repeals such former statute."

Wakefield *v.* Phillips, 37 N. H., 296.
Farr *v.* Brackett, 30 Vt., 344.
Gittings *v.* Cox, 31 Vt., 607.
State *v.* Conkling, 19 Cal., 105.

In the case of the United States *against* Claflin (97 U. S., 551) this rule is laid down, by this court, in the following words:

"In Norris *v.* Crocker *et al.* (13 How., 429) it was stated by this court:

"'As a general rule it is not open to controversy that where a new statute gives the whole subject-matter of an old one, adds offenses, and prescribes different penalties

for those enumerated in the old law, the former is repealed by implication, as the provisions of both cannot stand together.'"

In King *v.* Cornell (106 U. S., 396) this court expresses this familiar rule in these words:

"While repeals by implication are not favored, *it is well settled* that where two acts are not in all respects repugnant, if the later act covers the whole subject-matter of the earlier," [as section 1 of the act of 1887, so far as relates to jurisdiction, does,] "and embraces new provisions which plainly show that it was intended as a *substitute* for the first, it will operate as a repeal." (Quoting The United States *v.* Tynen, 11 Wall., 88.)

We submit that nothing can be plainer than that section 1 of this act of 1887 is one designed to cover the entire field of the jurisdiction of the Court of Claims, both as to what is included in that jurisdiction, and what is excepted; and, since cases dependent upon treaties are not excepted in the new law, we submit that section 1066 is repealed.

What we have stated regarding the repeal of section 1066 has been stated in obedience to the rule which requires of counsel, responsible for the presentation of cases to courts, especially of last resort, to present *every* point, fairly entitled to be considered; and we have not done so, because we apprehend that this court will find it necessary to decide this question of repeal. This is so simply because the present claim in no sense "arises out of, or is dependent upon, a treaty."

The case relied on, in the court below, as establishing the point that the present action "arises out of, and is dependent upon, the treaty" of Washington, was Great Western Insurance Company *v.* The United States, 112 U. S., 193.

The inapplicability of that authority to the present case is exceedingly manifest, and is, doubtless, sufficiently stated in the opinion of the court in the present case. The in-

surance case was, *by the petition*, expressly, and with great detail, based upon the treaty of Washington. It alleged the payment of a large sum for losses caused in the war by the "Alabama" and "Florida"—the subrogation of the company to the right to indemnity in place of the owners of the destroyed vessels; that the British government was guilty of wrong, and became responsible in permitting the said Confederate cruisers to be fitted out and furnished in British domain; that the company placed these claims with the Secretary of State; that the treaty provided for them; that the Geneva Award was recovered for them in the recovery of the $15,500,000 award; that this money was paid to the United States; that the United States received it *in trust* for the benefit of the insurance company in virtue of said treaty; and thus, (as is expressly stated by this court, p. 195,) the petition "places the right of recovery on the ground that, by virtue of the transactions between this Government and Great Britain, and the receipt, by the former, of the money paid by the latter on account of these claims, the United States became a *trustee* for the claimants to the amount of this loss, and liable to pay the same."

On page 195, *et seq.*, the court is careful to state, in detail, the particulars in which and whereby the petition, expressly, bases the claim sued for upon the treaty. The court recites as follows that such petition avers "the United States took charge of the claim of petitioner against Great Britain;" that by the treaty "Great Britain stipulated that she would pay this claim to the United States (as petition alleges) for the use of said petitioner;" that "Great Britain did pay it to the United States;" that the "purpose of payment, under the treaty, inhering in the receipt of the money, constitutes the foundation of appellant's claim;" that "without the treaty the award would have bound nobody, and would have been, at most, a friendly recommendation;" that by virtue of the treaty the claim was

turned into a solemn obligation, and bound Great Britain to pay; that the effort of counsel for the insurance company to ignore the treaty, the award, and the receipt of the money by the United States, as a foundation of appellant's claim, and to rest the right of recovery solely upon an act of the 1st of March, 1877, (by which the fund was changed from an investment in Government bonds, and paid into the Government Treasury,) was "merely fanciful."

It thus is made absolutely plain, even to a demonstration, that the Insurance Company case was one growing out of a treaty, as that case was made by the petition.

We now turn to some suggestions showing how utterly opposite is the present claim, and that it is not one "arising out of, or dependent upon, a treaty."

Legal Signification of the Words "Growing out of, or Dependent on, any Treaty Stipulation."

We shall now attempt, in the light of what authorities exist, and in the light of the reason of the subject-matter, to ascertain the legal signification of the words contained in section 1066—"growing out of, or dependent on, any treaty stipulation."

The authorities, bearing upon this inquiry, are not numerous, but, we think, are quite sufficient. In Daineses' case (15 Court of Claims, 64) a consul sued, in the Court of Claims, for compensation for the extrajudicial duties imposed by the act of the 11th of August, 1848. (9 Stats., 276.) In that case the Attorney-General contended that section 1066 Revised Statutes prohibited the jurisdiction of the claim, because, "as without the treaty with China there would have been no such act as the act of the 14th of August, 1848," [should be 11th August,] "and without the treaty of 1830 with the Ottoman Porte there would have been nothing for the 22d section of that act to attach to. It was therefore argued that the present claim grows

out of a treaty, and was beyond the Court of Claims' jurisdiction."

To the contention the Court of Claims replied:

"We think that the connection between the claimant's demand for salary and the treaty, by virtue of which the office to which the salary is supposed to attach is alleged to exist, is not the *direct and proximate* connection which the statute contemplates."

The syllabus states accurately what the court held, thus:

"The statute contemplates a *direct and proximate* connection between the treaty and the claim."

This decision by the Court of Claims does not, it will be perceived, undertake to define what is requisite to make out the fact that the claim "arises out of, or is dependent upon, a treaty," further than to say that the treaty must be the proximate ground of the claim. It seems to us that the case of *Ex-parte* Atocha carries the definition of these words "arising out of, or dependent upon," a step farther than the case in 15th Court of Claims. In that case the claim sued for was one which it was alleged the United States had *expressly* assumed to pay *by its treaty* with Mexico of 1848.

The case was sent to the Court of Claims by the act of the 14th of February, 1865, which directed the court to examine into the claim, against Mexico, for losses sustained by Atocha, by reason of his expulsion, &c., and directed the court to determine the amount of his damages, if it should conclude that the claim against Mexico was just, and within the treaty of 1848, and directed the payment of the amount found. The Court of Claims found Atocha entitled, and determined the amount. The case was appealed to this court, and this court held there was no right of appeal, because that said act of the 14th of February, 1865, gave no such right of appeal, and because that act was simply designed as "furnishing a guide to the Government

in the execution of its treaty stipulation." In deciding that the case was not appealable to the Supreme Court, and that said act of 14th of February, 1865, sending the case to the Court of Claims, was one so sending it to said court, for "its action, rather *in the nature of a commission* to ascertain the facts, than a judicial tribunal," (112 U. S., 200,) the court held that the said act of 14th of February, 1865, did not design to place the Atocha case within or under the *general* jurisdiction of the Court of Claims. In so deciding, this court stated, in a sentence or two, the *limitation which section* 1066 *places upon that jurisdiction.* The court says (p. 444):

"All the cases of which the court could subsequently" [to the enactment of section 1066] "take cognizance, by either the general or amendatory act, were cases arising out of contracts or transactions between the Government, or its officers, and claimants; and in their decision the court was to be governed by those established rules of evidence which determine the controversies between litigants. Those acts have since then applied only to claims made *directly* against the United States, and for the payment of which they were *primarily* liable, if liable at all, and not to claims against *other* governments, the payment of which the United States had assumed or might assume *by treaty.*"

The meaning of this last sentence is explained by this court in said case of Great Western Insurance Company. In this last case the court says (p. 199):

"That [Atocha's] was a case in which, by *express* terms of the treaty, the United States had *assumed* the debt of Mexico to Atocha and others of this class. The present is a case in which such *assumption is implied* from the circumstances of the treaty and the receipt of the money.

"In the former case the United States *agreed*, for a valuable consideration in land or territory, to pay to Mexico $3,250,000 to her creditors residing in the United States. In the latter the Government received $15,500,000 from England, under what *is alleged* to be an *implied* promise to

pay a class of American claims against her. We can see no difference in principle in the two cases, as they have relation to the fact that both claims grew out of, and were dependent on, treaty stipulations."

The evident result of these cases is to define the meaning of the words "arising out of, or dependent upon," as being this, to wit, that to exclude the jurisdiction, the right being asserted, in the petition, must be one for which the Government of the United States is not "*primarily*" and "*directly*" liable to pay in virtue of its *own* obligation to its citizen, but is one where the Government is claimed to have become obligated, either through the *express* or the implied force and obligations of a treaty. In other words, if the right asserted in the petition is one which ignores the treaty, and in which, in order to make out the claim, the treaty need not be appealed to at all, then it is not a "claim arising out of a treaty." In order to make the claim one arising out of a treaty, the *right itself*, which the petition makes to be the foundation of the claim, must have its origin—derive its life and existence—from some treaty stipulation. This obligation or right may be an implied one, as where the Government, in virtue of the treaty, receives money in trust for the use of its citizens, in such sense as to make the Government the trustee for the citizen, or, in the case stated by Justice Miller, (112 U. S., 200,) where the money is received under such conditions as to raise "what is alleged to be an implied promise to pay the claims of American claimants against her."

The case of Alling *v.* The United States (114 U. S. R., 562) is merely a reaffirmance of the law of Great Western Insurance Company.

In the opinion of the court below in the present case is found, upon this point, the following language:

"The defense rely upon the case of Great Western Insurance Company as decided in the Supreme Court. (112 U. S. R., 193.) But in that case the claimant corpo-

ration was not seeking to recover under any law of Congress, but was attempting to enforce an alleged implied assumpsit on the part of the United States, growing out of, and dependent upon, the stipulations of the treaty of Washington, notwithstanding the laws of Congress, which expressly excluded its claim from consideration and from payment out of the fund in controversy. Instead of founding its claim upon any law of Congress, as do the present claimants, the company invoked the jurisdiction of this court to set aside and annul the statute provisions. The two cases proceed upon exactly opposite grounds.

"In our opinion, this court is not excluded from the jurisdiction of the present case by reason of section 1066 of the Revised Statutes, even if that section be in force and unrepealed. But it is a serious question whether that section is now in force."

These are about all the authorities of which we know bearing upon the meaning of section 1066. Their result, stated in our own language, is plainly this: That to bring a claim within the words "arising out of, or dependent upon, the treaty," the petition, in setting up the claim, must be one which bases the right, or the claim asserted, upon the operation or effect of a treaty; and the alleged obligation to pay must be one where the right arises, either *expressly or impliedly*, out of the force and operation of the treaty. Any other interpretation than this, and which makes these words of section 1066 to apply to a case like the present, where the *only* connection between the claim and any treaty is in the fact that *there would have been no Geneva award fund to distribute but for the treaty*, is an interpretation which reduces this section to the absurd.

There would have been no Government of the United States but for the treaty of the 3d of September, 1783, (8 Stats., 80,) and the United States would never have owned its present public domain but for that treaty, which brought such public domain, as the property of the United States, into existence.

The United States would not have been the owner, or

in possession, of the vast domain included within "the colony or province of Louisiana" but for the provisions of the treaty with France of the 30th of April, 1803. (Vol. of Public Treaties, 232.) So, likewise, would not the United States have owned Florida but for her treaty with Spain, ceding East and West Florida, of the 29th of October, 1820. (8 Stats. 252.)

If a suit in the Court of Claims has arisen, or should arise, between the United States and a citizen, regarding any of these lands, or the proceeds or value thereof, it could, with precisely the same propriety, be said that the Court of Claims was excluded from jurisdiction because the lands, and their value so involved in the suit, came to the Government in virtue of treaties, and the claim, therefore, arose out of the treaties, as it can be said, that the present claim arises out of a treaty merely because the Geneva Award Fund would not have come to the United States but for the treaty. This will be made more apparent as we proceed.

In entering upon some suggestions regarding the matter of the nature and character of this Geneva Award Fund, as bearing upon the question of its acquisition having created any private right, we state now the following proposition:

This Geneva Award Fund was in fact, as well as in contemplation of law, acquired and held, by the United States, as a National Fund, wholly free from every manner of private, as distinguished from national, claim or property right. Hence no private claim, neither the one involved in this action, nor any other, can, by possibility, arise out of, or depend upon, this treaty.

We shall not in this brief attempt anything like a full presentation of the facts and considerations which show that the fifteen and a half millions of dollars received by the United States from Great Britain were received as moneys belonging to the United States, the receipt of

which created no obligation by the Government to private parties, and shall attempt nothing beyond the merest synopsis of some of these considerations. These may be enumerated as follows:

I. The text of the treaty itself, throughout, speaks of and deals with the matters of "difference" submitted to arbitration as matters existing *between the two nations as such*. The claims spoken of in the treaty as the claims to be arbitrated are spoken of as "claims on the part of the United States." The gross sum provided for in article 7 was a sum "to be paid by Great Britain to the United States," &c.

II. The instructions by the Secretary of State, Mr. Fish, of the 8th of December, 1871, to Mr. Cushing, leading counsel for the United States, are explicit and in accord with this view. Mr. Fish says:

"The President desires to have the subject discussed as one *between the two Governments;* and he desires me to urge upon you strongly to secure, if possible, the award of a gross sum.

"In the discussion of this question, and in the treatment of the entire case, you will be careful not to commit the Government *as to the disposition of what may be awarded*, or what may be recovered in the appointment of the board of assessors mentioned in the tenth article of the treaty.

"The Government wishes to hold itself free to decide as to the right and claims of the insurers upon the termination of the case. If the value of the property captured or destroyed be recovered in the name of the Government, *the distribution of the amount recovered will be made by this Government without committal as to the mode of distribution.* It is expected that all such committal will be avoided in the argument of counsel."

III. Mr. Cushing, in his book on the Geneva Award, states the same thing thus (p. 164, 165):

"It is, however, *not a special trust legally affected to any particular claim or claimant*, but a general fund to be ad-

ministered by the United States in good faith in conformity with their own conceptions of justice and equality within the range of the award."

IV. Mr. Gladstone, Prime Minister of England at the date of this award, on the floor of Parliament declared distinctly regarding the character of the award as follows:

"The Alabama Claim was a *public claim arising between the two Governments.* * * * *No claims of individuals have been submitted to arbitration in relation to the Alabama.* What was submitted to arbitration was entirely a question between two Governments."

V. Precisely the same view of the character of this fund as a purely national one was taken by that class of opinion in the various Congresses which dealt with, and disposed of, this fund, and which class was the one which prevailed in disposing of the fund.

The debate regarding the question of the national character of this fund, as distinguished from its being a trust fund, was a long-continued one, extending through several Congresses, and was distinguished for its zeal and ability, as evinced not only in debate but in reports of committees. The report upon which the 45th Congress passed the bill for disposing of this fund in 1878 is House Report No. 663, 45th Congress, 2d session; and it was the views of the minority as found in this minority report, made by Mr. MacMahon, and signed by him and Wm. P. Frye, Benjamin F. Butler, Omar B. Conger, and Eldridge B. Lapham, which were adopted by the House by passing the minority's bill by a vote of about two to one. The position of that minority regarding the character of the fund is unmistakably expressed, again and again, in language in exact accord with the bill so passed by the House dealing with the fund as a purely national one. In that minority report it is declared that "three Congresses have already spoken—the 42d, 43d and 44th—and we have no fear as

to what will be the result in the 45th." On page 26 the minority say:

"The undersigned are of opinion that the fund in question is an *indemnity fund*. They believe it was awarded to *us as a nation*. *They believe that no person or corporation has a legal or equitable right to any portion of it.* They regard it a fund for actual sufferers by the conduct of Great Britain. And they recognize *no obligation upon the Government, in consequence of any claim that transpired at Geneva, to give it any particular direction.* The tribunal of arbitration dealt with the question submitted, only for the purpose of arriving at an amount to be paid by Great Britain to the United States. *It remitted the distribution of the award to our Government. No claimant was permitted to be heard at Geneva.* And the amount was arrived at without permitting contest between the rival claimants, and without satisfactory knowledge to the world of what claims were actually embraced in it. Hence the agent of the United States, in his report to the Government, says, vol. 4 of the papers relating to the treaty:

"'The deliberations of the tribunal on the subject of damages were held with closed doors. * * * It does not appear in the protocol how the arbitrators arrived at the amount.'"

Although the bill which was reported by said minority passed the House, as above stated, yet for some reasons, not now remembered, it did not pass the Senate, probably because it was not reached.

VI. The report under the influence of which the act of Congress approved 5th of June, 1882, (22 Stats., 98,) was passed through the House, and under which the Court of Commissioners of Alabama Claims was revived, and the last of the fund distributed, is House Report No. 307, Forty-seventh Congress, First Session, made by Mr. Reed, of Maine. That report takes precisely the same ground as was taken in the minority report already quoted. The Committee says:

"This sum was, therefore, awarded to the *nation and not to individuals*, consequently the nation has undertaken to distribute it."

Mr. Reed also refers to and adopts the said report of the minority by Mr. MacMahon, and says:

"Your Committee do not deem it necessary to give a complete legislative history of this question in Congress. That can be found, at length, prior to the 45th Congress, in Mr. MacMahon's statement of the views of the minority report—663—of that Congress. They content themselves with a statement of the important votes on various propositions."

On page 5 the Committee say:

"When your Committee assert that *no one has any legal rights as to the funds at issue*, they do not mean to leave this fact to rest upon their assertion only. Such has been the uniform opinion of those best qualified to know, and such has been the decision of the highest English courts on similar questions.

"Whoever would rightly understand this question, must never lose sight of the fact that the treaty of Washington and the tribunal at Geneva, with all its incidents and decisions, was *entirely an affair between nations*. No individual claims were then decided, only those between nations. Individual claims were put in, but only as a matter of evidence to show what the nation lost. Both sides understood this and proclaimed it. The tribunal understood it and proclaimed it. It has remained only for the insurance companies to dispute it."

The Committee then quotes the instructions already quoted above, given by Mr. Fish to the counsel at Geneva, and also what is above quoted from Mr. Gladstone, as found in Foreign Relations U. S., 1873, part 1, page 377, and also the same volume, page 74.

The Committee then quotes from the case of Rustonjee *v.* The Queen, (Law Reports 1875, Q. B. Division, vol. 1, p. 487,) and from the same case in Law Reports, vol. 2, p.

69, which was a case wherein the claim was made by "Petition of Right" in favor of a British subject in a three-million-dollar award, paid to the Queen by China, on account of debts due to British subjects from Chinese merchants who had become insolvent. The opinion of Chief Justice Cockburn, one of the Commissioners at Geneva, is quoted, and also that of Lord Coleridge, holding that, even in that case, a much stronger one in favor of private right than the present, the Fund recovered was national.

VII. The opinion of the Court of Claims in Great Western Insurance Company *against* The United States (found in 19 Ct. of Cls. R., beginning at page 211) is commended for its ability, by this court, in its opinion in the same case, in 112 U. S., although the present point was not by this court there decided. In that opinion by Chief Justice Drake he reaches the same conclusions as those above stated regarding the character of this fund.

The court there says:

"That sum was received by the United States in their *sovereign capacity, unmixed, in law, with any private right*, and unaffected by any legal obligation to pay out any part of it to any one; none of it could ever go out of the Treasury to any individual, except in consequence of appropriations made by law. * * * It was the sovereign right of the United States, of their own volition, when and how they pleased, to provide, by law, for that ascertainment," [of the parties whom the Government should distribute to,] "and no such right could possibly exist elsewhere. From sovereign inaction or delay, from sovereign partiality or even injustice in selecting the claims to be allowed, there was no appeal except to the conscience and good-will of Congress. It was to every intent a case where without written law there could be no legal right."

The case of Bernard *against* Rodocanachi, Sons & Co. was decided first in the Common Pleas, (5 Common Pleas Division, 242,) then in the Court of Appeals, (6 Q. B. Divi-

sion, 633,) and then in the House of Lords, (7 Appealed Cases, 333.) The same decision was reached regarding this fund as being a national one. In the House of Lords the Lord Chancellor attributed to our Congress the same power precisely as was claimed for the Queen in the above-cited (Rustonjee's) case.

The Lord Chancellor says:

"I cannot, for a moment, understand the doctrine of moral rights and obligation, or *implied trust* affecting supreme governments and independent States."

VIII. And on this point, of the character of this Fund as a national one, we, now, and last, allude to the various acts of Congress dealing with it, and distributing it according to the nation's sovereign pleasure, and without regard to, and in denial of, all private rights as attaching to the fund in virtue of the treaty, and of the conditions of its collection. Hence, as a result of the fact that this money was collected by the United States as its own, it follows that the present action no more "arises out of, or is dependent upon, a treaty" than it would be if the money sued for were a part of the moneys accruing to the United States from the sales of its public lands, and which proceeds were ordered, by Congress, to be paid to designated parties. It can be no more said of the present claimant's case that the claim arises out of a treaty than could the same thing be said if this suit was by some of the "scrub women" named in the first section of said act approved 2d of June, 1886, and set forth in the appendix to this brief, and under which this suit is brought.

One other proposition, and we then leave this question of jurisdiction, depending upon section 1066. Our proposition is this: That, although we admit that where the United States avowedly and in fact extends its good offices to a citizen for collecting *his* claim against a foreign government, and takes that collection as one made on behalf

of such citizen, there the United States has consented to become the high diplomatic agent of its citizens in making the collection, and moneys so received are held in trust for such citizen, yet this doctrine has no sort of application to such a collection as the Geneva Award, because that award was ostensibly, avowedly, *and according to the face of the transaction*, an exercise by the nation of its international and diplomatic functions and rights—these exercised in its own sovereign interests and behalf. And in such a case of such a collection so made apparently on its own behalf by the Government, there the *decision by Congress* as to the character of the Fund is a political decision, and one not reviewable by the courts. Hence Congress having decided that this is the money of the nation, subject to its own sovereign pleasure as to the distribution thereof, that decision by Congress settles the question that this was, in every possible view and intent, national money, and that our right to it arises out of the act of the 2d of June, 1886, and not out of any treaty.

But even if Congress has erred in holding this money to be free from all trust and private claim, and in attempting to distribute it, or rather a sum *equal* to the balance of the Geneva Award, without making compensation therefor, and if the result is to leave, in the Treasury, of the money representing the Geneva Award, a sum equal to those balances of appropriation which were meant to exhaust it, then even such a state of facts and law as that has no effect upon the present case.

This is so because it is manifestly true, and is so universally held, in cases like this, that these appropriations do not attach to, nor dispose of, *any specific roll of bills or mass of coin*. All that the appropriation accomplishes is to take out of the Treasury a sum of money—that is, of *any* and *all* money, equal to the appropriation. Hence if this law appropriating this money *as* Geneva Award money cannot have the effect of abolishing a trust which attaches to such

money, because of its being private property, yet the appropriation *does* operate as an order to pay to the claimant a sum of money equal to his proportion of the appropriation, and is operative to give him a right thereto as money arising out of an act of Congress. And the consequence of this state of facts is not simply to leave in the Treasury the Geneva Award Fund, but to give claimant a right of action for what the statutes order to be paid him.

This last supposition is absurd, as we think, and yet it is sound, provided the Geneva Award Fund is, indeed, beyond the power of Congress to distribute.

We now turn to, and insert portions of, the brief below which we think it best to insert.

We deem it best to state—

First. The grounds upon which we assert the jurisdiction of the court for the purposes of the recovery sought in this action.

Second. The jurisdiction being established, the grounds upon which we assert the right of recovery.

Looking to the language of section 5 of the act of June 2, 1886, printed in the Appendix, it will be seen that that section, in substance and effect, is this:

It directs that the amount "which shall be paid out and distributed in payment and satisfaction of the judgments of the first and second class which are now existing, as rendered by the said court, against the Geneva Award fund," shall be ascertained in the manner there specifically pointed out.

The section, after ascertaining and fixing the amount of the fund in a specific and definite manner, then requires the judgments of the first class, which had been already paid, to be subtracted from the amount of the fund so fixed and ascertained.

Then the section proceeds, in specific and *mandatory*

terms, to enact that "the balance shall be applied as follows:

"*First.* To the payments of the judgments of the first class yet remaining unpaid, as provided in said act approved June 5, 1882, and the residue shall be paid out and distributed, *pro rata*, upon judgments in favor of claimants of the second class, as provided in the said last-named act. And the amounts so ascertained as aforesaid, are, for the purposes of making the payments aforesaid, hereby appropriated out of any moneys in the Treasury not otherwise appropriated."

The thing to be observed regarding this language is, that it is peremptory and specific—is, in no possible view, directory or permissive merely. Every step in the process of ascertaining the fund, payable out, is explicit and incapable of misconstruction, and after the ascertainment of the balance payable, *pro rata*, on judgments of the second class is reached, the duties which are imposed by the act, regarding the distribution and payment out, are purely and wholly ministerial, and the obligation imposed is mandatory.

In view of these features of the law, our first proposition is, that this court has jurisdiction for the purposes of this recovery under the first clause of section 1059, (R. S.,) providing that the Court of Claims shall have jurisdiction to hear and determine all claims founded upon any law of Congress (now section 1 of Tucker Act). This language, therefore, of the said section 1059 and of the act of Congress of June 2d brings the present case in legal principle precisely within the case of Hukill *v.* U. S., (16 C. C., 562, 565.)

In that case the jurisdiction of the court depended wholly upon the act of Congress of March 3, 1877, (19 Stats., 344, 362,) appropriating $375,000, or so much thereof as may be necessary, to pay the amount due to mail contractors for mail service performed in the State of

Alabama, and other States, (naming them,) in the years 1859, 1860, and 1861, before these States engaged in war against the United States; with a proviso that any such claims that have been paid by the Confederate States Government shall not be again paid. The jurisdiction of the court in that case depended wholly upon this act of Congress, and the court decided what is expressed in the following language of the syllabus:

"I. An appropriation, by Congress, of a given amount of money for a specified purpose is not a designation of a specific parcel of money, but is simply an authority to apply that amount of money to that purpose.

"*II. Every appropriation for the payment of a particular demand or class of demands involves and includes a Congressional recognition of their legality and justice, and is equivalent to a mandate to the officers of the Treasury for the payment thereof.*

"*IV. This court has jurisdiction of claims which Congress acknowledges as rights against the Government. They come within the intent of the statute declaring that the court has jurisdiction to hear and determine all claims founded upon a law of Congress.*"

In that case the court reached the conclusion that, whilst the court had jurisdiction, and the party would be entitled, so far as the matter of jurisdiction was concerned, to recover, yet, under said *proviso*, prohibiting a second payment where the service had been paid for by the Confederacy, this proviso, when interpreted in connection with certain Confederate statutes directing the payment of the same claims, cast the *burden* of showing that the claim had not been so paid upon the claimant, and he failed to recover because he had given no proof that he had not been paid.

In the case of Blunt's Administrators, (21 C. C., 274,) this court reaffirms the case of Hukill, and presents a review of the prior cases. The opinion is a careful and elaborate one by Justice Schofield, and the additional cases of Hoffman (17 C. C., 55), opinion by Justice Nott,

and of Modecai (19 C. C., page 11), opinion by Chief Justice Richardson, announcing the same doctrine, are cited and approved. There is then also cited George's case (18 C. C., 432); Wray's case (19 C. C., 154); Railroad Company (19 C. C., 300); Railroad Company (19 C. C., 49); Railroad Company (19 C. C., 476).

The last-named case, Nashville, Chattanooga & St. Louis R. R. Co., (19 C. C., 476,) was affirmed in the Supreme Court, and this court says, in regard to that affirmance, that "*the latter case was appealed to the Supreme Court, and the judgment of this court affirmed without questioning the jurisdiction.*" (113 U. S. R., 261.)

These cases, therefore, decide two things, for the purposes of the present case:

First. That this court has jurisdiction for the enforcement of the payment of the present claim.

Second. That the appropriation is not of any specific dollars, but creates a permanent and standing indebtedness against the Government and its Treasury for the amount ordered to be paid, of which this court has jurisdiction for the purpose of enforcing its payment.

Another element of the present case may be as to the effect which the *rejection* of a claim, by the accounting officers, has upon a right of action depending upon a law of Congress. On this point our proposition is that where a claim is valid and is recoverable in this court under the first clause of section 1059, there the rejection of the claim by the accounting officers has no effect upon the right of action.

What is decided in the case of Thomas *v.* United States (16 C. C., 522) is accurately stated in the seventh paragraph of the syllabus in these words:

"Claimant in this court presenting a claim founded upon a law of Congress has a legal right under Rev. Stats. 1059

to a definitive adjudication; *and the power of the court, to afford that, cannot be considered as interfered with by anything short of a lodgment of the power of definitive adjudication in some other tribunal or officer.*"

There the action was for the recovery of the value of horses lost in the military service, such action being based upon the acts of Congress of March 3, 1849 (9 Stats., 414), and the act of June 22, 1874 (18 Stats., 193). In that case the court says that the right of action "is founded upon a law of Congress, and our *prima-facie* jurisdiction of it, therefore, cannot be questioned." (P. 526.)

But it was claimed in that case that, since section 2277 (R. S.) gave the Third Auditor power to receive and examine accounts for loss of horses, etc., and as he had *rejected* this claim, therefore the court was deprived of its jurisdiction. But on this point the court says:

"This power is given to him simply as an accounting officer just as it is given as to any other account mentioned in the section."

And that—

"This definition of his duties in regard to this class of cases *can have no effect to oust the jurisdiction of this court of a claim of this description any more than would any other statutory reference to an accounting officer of any other account.* If we should rule otherwise, it would, presently, be difficult to find any sort of an account of which this court could take jurisdiction; for hardly any one could be named of which it could not be said that some accounting officer had the power to examine it and certify the balance. And, moreover, a claimant here has a legal right to a definitive adjudication of his claim; *and our power to afford that cannot be considered as interfered with by anything short of a lodgment of the power of definitive adjudication in some other tribunal or officer;* which it is needless to say is not as to a claim of this kind in the Third Auditor."

In Brown *v.* United States (6 C. C., 171, 179 *et seq.*) the same thing is, in principle, elaborately considered and de-

cided, holding that the accounting officers of the Treasury have no power to review the amounts allowed, to the citizen, by the courts, or to cut down their rights so established, and, *a fortiori*, have no right to curtail the amounts allowed them by an act of Congress definitely fixing the amount due such citizen.

In the case of Longwill *v.* United States (17 C. C., 288) the same thing is explicitly decided. The third paragraph of the syllabus indicates what is there held, and is in these words:

"The rejection of a claim, in whole or in part, by the accounting officers, leaves the party free to pursue his remedy at law, namely, an action in this court, *although he may have accepted the portion allowed.*"

The language of the court, by Justice Richardson, on this point, is as follows:

"And the decisions of the accounting officers of the Treasury, as such, in the settlement of accounts for or against claims, have no effect upon the legal rights of the parties, excepting among the Executive officers in the matter of accounting, and that the only practical effect of such decisions is to authorize the issue of warrants upon which claimants may obtain payment at the Treasury when decisions are in their favor, and to prevent the issue of such warrants when the decisions are against them, *are no longer open questions since the recent decisions of this court and of the Supreme Court, if, indeed, they ever were seriously in doubt.*"

The court then cites McKnight *et al. v.* U. S., (13 C. C., 291,) affirmed on appeal (98 U. S., 179); Real Estate Savings Bank *v.* U. S., (16 C. C., 350,) affirmed on appeal; Barnett *et al. v.* U. S., (16 C. C., 521,) affirmed on appeal; Rev. Stats., sections 246, 247.

The authorities now gone over establish, therefore, the following propositions:

First. That the allowance to a citizen, by an act of Congress, of a specific amount of money, and a direction of its

payment, *gives this court jurisdiction to render a judgment therefor under the first clause of section* 1059 *R. S.*

Second. That such appropriation, by Congress, of a given sum of money, for a named purpose, is not a designation of a particular pile of coin or roll of notes, to be set aside and held for that purpose and to be used for no other, but is simply a legal authority to apply so much of any money in the Treasury to the indicated object. (16 C. C., 561.)

Third. Every appropriation for the payment of a particular demand, or class of demands, necessarily involves and includes the recognition, by Congress, of the legality and justice of such demand, and is equivalent to an express mandate to the Treasury officers to pay it. (16 C. C., 565.)

Fourth. That the disallowance by an accounting officer of any part of the money so directed to be paid has no effect upon the legal rights of the parties either as to the amount recoverable, or as to the jurisdiction of this court to render judgment therefor. (17 C. C., 291.)

Fifth. And the rejection of the claim by the accounting officers, either in whole or in part, leaves the party free to pursue his remedy at law, namely, an action in the Court of Claims, although he may have accepted the portion allowed. (17 C. C., syllabus, 288.) *And acceptance of the part allowed does not prejudice the right to recover the balance.*

These points now gone over establish the right of recovery in this case, unless that right is defeated by the fact that the accounting officers were *right*, as a matter of law, in making the substraction of "expenses of tribunal of arbitration at Geneva, $249,168.41," from the amount directed by section 5 of the act of June 2, 1886, to be paid on claims of the second class.

Section 5 of the act of June 2, 1886, is so minute, specific, and unmistakable in its provisions in regard to how the fund to be distributed is to be made up and arrived at, that it is impossible for us to make plainer by argument than it

is made by that section 5, that this deduction of $249,168.41 is unauthorized by law. Indeed, the balance-sheet, returned by the Department in answer to the call of the court, shows this deduction to be not classified, by that sheet, under any provision of that statute, whilst every other deduction said sheet does classify under the proper sections of said act of June 2d.

That balance-sheet, specifically and in detail, states the amount of each item which was authorized to be *added* to the $9,703,904.89, named in said section 5, as the amount of the Geneva Award fund named in the Secretary's letter of June 30, 1877. This amount, so added, is found on page 7 of the said return by the Secretary, and is $385,100.07.

Increasing the said fund to the second amount expressly named in said act, namely.....	$10,089,004 96
And said section 5 requires the "estimated" value of the court furniture to be added to this $10,089,004.96, which estimate was.....	800 00
And is in said return added, producing....	$10,089,804 96

Then section 5 proceeds to state what subtractions shall be made from this aggregate so reached. The first is the "estimated" cost of the services and expenses incurred after 31st of December, 1885, which section 4 of said act required to be "estimated" and which was estimated at $15,000, and this is in said return properly subtracted.

Then section 5 requires a *further* subtraction from the amount so ascertained, to wit, the amount provided for in section 1 of said act.

What section 1 authorizes to be audited and paid are—

1. Compensation of assistant counsel not theretofore paid.

2. Subordinate clerks, accountants, computants, expert examiners, and assistant examiners, janitors, messengers,

watchmen, and scrubwomen, employed prior to the first day of January, 1886.

3. *All other necessary expenses of the court* (not of the Geneva tribunal) up to the first day of January, 1886.

These expenses of the "*court*," being sums to be deducted, will be found set down *seriatim*, the items being as follows:

Expenses to be estimated and deducted under section 4, $15,000. Expenses to be audited deducted under section 1, which were paid after January, 1886, audited before the passage of the act of June 2d, 1886, for services to December 31, 1885, chargeable to the fund under section 1, $3,659.21. Then further deduction on unsettled accounts allowed by accounting officers after June 2, 1886, for services to the 31st of December, 1885, authorized by section 1, (including Allen's accounts under section 2,) $13,842.86. Other expenses of the "court" and salaries and expenses for the years 1875, 1876, 1877, 1878, 1883, 1884, 1885, to December 31, 1885, (plus advertisement of sale of bonds in 1876,) $470.90. All these deductions added together amount to $750,193.63. This aggregate makes the sum total of every possible item of deduction authorized to be made by section 5, to wit, $750,193.63. This, subtracted from the above-named $10,089,804.96, leaves a balance of $9,339,611.33, which ought to have been applied, according to the express and unmistakable provisions of the act, to the payment of judgments of the first and second class.

The judgments of the first class aggregate, as per the said statement returned by the Treasury, $3,350,947.51. This, subtracted from the said $9,339,611.33, leaves the amount which ought to have been divided, to wit, as is set down in said balance sheet, $5,988,663.82.

According to the mandatory provisions of the said act, this $5,988,663.82 ought to have been distributed *pro rata* upon judgments of the second class.

But instead of making this division, the accounting officers have subtracted from this last-named sum the said

expenses of tribunal of arbitration at Geneva, to wit, $249,168.41, thus reducing the fund divided *pro rata* on judgments of the second class to $5,739,495.41.

For this last-named subtraction we submit there is no color of right in the statute, and it seems to have been subtracted only by virtue of what is sometimes denominated in the books "brute force."

The effect of this subtraction upon the amount paid to the claimants is to reduce it by the amount stated in the claimants' petition, to wit, by the amount and sum of $5,306.56, for which judgment is asked.

SAMUEL SHELLABARGER,
J. M. WILSON,
Atty's for Appellees.

APPENDIX.

AN ACT to provide for closing up the business and paying the expenses of the Court of Commissioners of Alabama Claims, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting and disbursing officers of the Treasury be, and they are hereby, authorized and directed to audit and pay the compensation not already paid of assistant counsel on behalf of the United States, subordinate clerks, accountants, computants, expert examiners, and assistant examiners, janitors, messengers, watchmen, and scrub-women employed by the Court of Commissioners of Alabama Claims prior to the first day of January, eighteen hundred and eighty-six, at the rate of compensation fixed by said court, and in accordance with vouchers approved by said court and certified by the presiding judge thereof, and also to audit and pay all other necessary expenses of said court up to the day last mentioned, approved and certified in the manner aforesaid, to be paid out of any moneys in the Treasury not otherwise appropriated, and to be reimbursed out of the unappropriated moneys of the Geneva Award fund.

SEC. 2. That the said accounting officers are hereby also directed to allow to Andrew H. Allen, in the settlement of his accounts with the Treasury Department under his appointment as disbursing agent, made by the Secretary of State on July twentieth, eighteen hundred and eighty-two, all sums of money which he may have paid, covered by vouchers approved and certified as described in the preceding section, and also compensation for his services as such disbursing agent, at the rate fixed by the Secretary of State in his letter of May second, eighteen hundred and eighty-three, up to the first day of January, eighteen hundred and eighty-six, so far as he has not already been paid.

SEC. 3. That the powers of the clerk of said court are hereby extended for an additional period, not to exceed six months from and after the termination of said court, on the thirty-first day of December, eighteen hundred and eighty-five, for the purpose of closing up the business of his

office, and for depositing the records, documents, and all other papers of the court or its officers in the office of the Secretary of State, as provided in the act re-establishing said court, and the act therein referred to; and said clerk is hereby authorized to employ such assistants as he may deem necessary for the purpose of enabling him to carry into effect the provisions of this act, not to exceed in number those heretofore employed, said assistants to be paid monthly, at the same rate of compensation heretofore paid them, from and after said thirty-first day of December, eighteen hundred and eighty-five, on vouchers certified by said clerk, under the direction of the Secretary of State, from said Geneva Award fund; and all disbursements shall be made by said clerk, under the direction of the Secretary of State. The Secretary of State is hereby authorized and directed to make sale of all furniture and other property in and about the building used and occupied by the said court, and which were procured for the use of the court and the officers and employees thereof, at such time and place and in such manner as he shall deem most advantageous to the Government, and to cover the proceeds of such sale into the Treasury.

SEC. 4. That it is hereby made the duty of the Secretary of State, with the assistance of the clerk of the said court, to immediately after the passage of this act make an estimate of the cost and expenses for the salary and pay of the clerk and the employees under him, and all other necessary incidental expenses, for and during the time from said thirty-first day of December, eighteen hundred and eighty-five, not to exceed six months as aforesaid, as shall be judged necessary, as aforesaid, for completing the journals, records, and other entries and business of said court required to be completed, and for putting in order, arranging, and delivering to the Secretary of State all said records, journals, documents, papers, and other property lately appertaining to said court and which are hereinabove named: *Provided, however*, That the said expenses provided for in this section to be estimated as aforesaid shall not exceed the sum of fifteen thousand dollars; and that any sum which may remain of the amount so estimated and deducted from the said fund for the purpose named in this section shall be by the Secretary of State covered into the Treasury of the United States; and the said Secretary of State shall further make an estimate of the net amount which will

probably be realized and covered into the Treasury from the sale of the furniture and property hereinbefore named.

SEC. 5. That the amount which shall be paid out and distributed in payment and satisfaction of the judgments of the first and second class which are now existing as rendered by the said court against the Geneva Award fund, and in payment of the expenses, salaries, and other outlays contemplated and provided for in this act, and in the act re-establishing the said court approved June fifth, eighteen hundred and eighty-two, shall be ascertained in the following manner: To the sum of nine million seven hundred and three thousand nine hundred and four dollars and eighty-nine cents, this being the amount of the said Geneva Award fund remaining in the Treasury, as disclosed by the Treasury report of June thirtieth, eighteen hundred and seventy-seven, and the letter of the Secretary of the Treasury to the Chairman of the Committee on the Judiciary of the House of Representatives dated April twenty-second, eighteen hundred and eighty-four, shall be added the premium realized from the sale of certain bonds in which the said fund was invested, namely, the sum of three hundred and eighty-five thousand one hundred dollars and seven cents, making ten million eighty-nine thousand and four dollars and ninety-six cents; and to this sum shall further be added the estimated value of the said furniture and property, as provided for in section four of this act; and from the aggregate sum so ascertained shall be subtracted the estimated cost of the services and expenses provided for being estimated in section four of this act, and also the amount provided for in section one of this act, together with all the other expenses of the court; and from the amount so ascertained shall be further deducted the aggregate of the judgments of the first class which have already been paid, and the balance shall be applied as follows: First, to the payment of the judgments of the first class yet remaining unpaid as provided in said act approved June fifth, eighteen hundred and eighty-two, and the residue shall be paid out and distributed *pro rata* upon the judgments in favor of claimants of the second class, as provided in the last-named act. And the amounts so ascertained as aforesaid are, for the purpose of making the payment aforesaid, hereby appropriated out of any moneys in the Treasury not otherwise appropriated.

Approved June 2, 1886.